
United States
Circuit Court of Appeals

For the Ninth Circuit.

BYRON JACKSON CO., a corporation,
Appellant,
vs.

PATTERSON-BALLAGH CORPORATION, a
corporation, J. C. BALLAGH and D. G.
MILLER,
Appellees.

Transcript of Record

In Two Volumes

VOLUME II

Pages 315 to 596

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

CHICKERING & GREGORY,
DONALD Y. LAMONT,
FREDERICK M. FISK,
111 Sutter Street,
San Francisco, California.

LYON & LYON,
LEONARD S. LYON,
IRWIN L. FULLER,
811 West Seventh Street,
Los Angeles, California.

For Appellees:

MUSICK, BURRELL & PINNEY,
ANSON B. JACKSON, JR.,
1075 Subway Terminal Bldg.,
Los Angeles, California. [1*]

In the District Court of the United States, Southern District of California, Central Division.

Civil Action No. 1762-Y

No. 1762-Y

BYRON JACKSON CO., a corporation,
Plaintiff,

vs.

PATTERSON-BALLAGH CORPORATION, a
corporation, J. C. BALLAGH and D. G. MILLER,
Defendants.

Defendants.

COMPLAINT

Comes Now the plaintiff, Byron Jackson Co., and for a cause of action against the defendants alleges as follows:

I.

That plaintiff, Byron Jackson Co., is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Delaware; that defendant Patterson-Ballagh Corporation is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the County of Los Angeles, State of California, in the Southern District of California, Central Division; that defendants J. C. Ballagh and D. G. Miller both are, and at all times herein mentioned

were, citizens and residents of the County of Los Angeles, State of California, in the Southern District of California, Central Division.

II.

That the jurisdiction of this Court is based upon diversity of citizenship; that this is a suit of a civil nature between [2] citizens of different states, and the amount involved exceeds the sum of Three Thousand Dollars (\$3,000), exclusive of interest and costs.

III.

That there are now, and at all times herein mentioned were, one thousand (1,000) shares, and no more, of the capital stock of said defendant Patterson-Ballagh Corporation issued and outstanding, and that of said 1,000 shares 375 are, and at all times herein mentioned were, of record or beneficially owned by the said Ballagh; that of said 1,000 shares 375 are, and at all times since on or about February 15, 1939 were, of record or beneficially owned by the said Miller; and that of said 1,000 shares 250 are, and at all times herein mentioned were, of record or beneficially owned by said plaintiff.

IV.

That at the present time and at all times since February 15, 1939, the Board of Directors of said Patterson-Ballagh Corporation consisted of five (5) persons, and that said five (5) persons are and were at all of said times the said Ballagh, the said Miller, one E. S. Dulin, and other persons who were

selected as such directors by, and in fact were and are representatives of, the said Ballagh and the said Miller upon the said Board. That the said Dulin is, and at all times herein mentioned was, the president of plaintiff and represented and now represents plaintiff upon said Board. That the said Miller is, and at all times since February 15, 1939 was, the president of said Patterson-Ballagh Corporation, and that said Ballagh is, and at all times herein mentioned was, the secretary-treasurer of said Patterson-Ballagh Corporation. That the said Ballagh and the said Miller, by means of their said stock ownership and by means of their said representation upon the Board of Directors of said corporation by themselves and by their said representatives, and by means of [3] their being president and secretary-treasurer respectively of said corporation at all times herein mentioned since February 15, 1939, have dominated, controlled, and directed, and do now dominate, control, and direct each and every of the acts and doings of the said defendant corporation.

V.

That at all times herein mentioned since February 15, 1939, the said Ballagh and the said Miller have fraudulently and unlawfully connived, cooperated, schemed, and conspired, and do now fraudulently and unlawfully connive, cooperate, scheme and conspire, in directing the affairs of the said corporation for their own ends, as distinguished from the well-being of said corporation and the in-

terests of plaintiff as a minority stockholder thereof, and for their own profit as hereinafter in this complaint more particularly set forth.

VI.

That as a part of said scheme and conspiracy said defendants Ballagh and Miller while they along with their said representatives were directors of said defendant corporation, and over the protest of the said Dulin as plaintiff's representative upon said Board, did declare and pay to said Ballagh grossly excessive salaries and compensation for services rendered said corporation, as follows:

That during the calendar year 1939 the said Ballagh was paid the total sum of \$15,000 and that said sum was grossly excessive as such salary and compensation in at least the amount of \$3,000; that during the calendar year 1940 the said Ballagh was paid the total sum of \$30,166.66, and that said sum was grossly excessive as such salary and compensation in at least the amount of \$18,166.66; that during the calendar year 1941 and prior to the time of commencing this suit the said Ballagh has been paid [4] the sum of \$16,000, and that said sum was grossly excessive as such salary and compensation in at least the sum of \$9,000.

VII.

That as a part of said scheme and conspiracy said Ballagh and Miller while they along with their said representatives were directors of said defendant corporation, and over the protest of the said Dulin

as plaintiff's representative upon said Board, did declare and pay to said Miller grossly excessive salaries and compensation for services rendered said corporation, as follows:

That during the calendar year 1940 the said Miller was paid the sum of \$19,750, and that said sum was grossly excessive as such salary and compensation in at least the amount of \$7,750; that during the calendar year 1941 and prior to the time of commencing this suit the said Miller has been paid the sum of \$10,500, and that said sum was grossly excessive as such salary and compensation in at least the amount of \$3,500.

VIII.

That plaintiff has at no time since February 15, 1939, received any dividends whatsoever from said Patterson-Ballagh Corporation, and that said excessive salaries and compensation, as hereinbefore set forth, were determined by said Ballagh and Miller in furtherance of the above mentioned scheme and conspiracy, and plaintiff believes and therefore alleges that the amount of said salaries and compensation were fixed with the purpose and intent of depriving the plaintiff of dividends accruing or to accrue to said plaintiff from the said Patterson-Ballagh Corporation. That if said excess of said payments had not been made to the said Ballagh and the said Miller, said excess would have been available for the payment of dividends to the stockholders of said defendant corporation, including

the said plaintiff. That the amounts of said salaries and compensation were neither fairly [5] nor honestly determined by the said Ballagh and the said Miller.

IX.

That for and on account of the payment of said excessive salaries and compensation, as hereinbefore in paragraphs VI and VII of this complaint set forth, said defendants Ballagh and Miller are indebted to said defendant corporation in at least the sum of \$41,416.66, no part of which has been repaid by the said Ballagh and the said Miller, or either thereof, to said defendant corporation.

X.

That the plaintiff was a stockholder at the time of each and every transaction of which plaintiff now complains, and that this action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction.

XI.

That plaintiff has attempted to secure from the directors of said defendant corporation and from the stockholders of said defendant corporation action by said defendant corporation in the bringing and prosecuting of this suit and, to that end, did take the following steps:

(a) That on or about August 5, 1941, plaintiff did serve upon the Board of Directors of said defendant corporation a demand in words and figures as set forth in Exhibit "A" attached to this com-

plaint, which said Exhibit "A" is by this reference made a part hereof.

(b) That on or about August 8, 1941, said plaintiff did cause the said Dulin, who is and at all times herein mentioned was plaintiff's president and the representative of plaintiff upon the Board of Directors of said defendant corporation, to deliver to the said Miller as president of said defendant [6] corporation a letter in words and figures as set forth in Exhibit "B" attached to this complaint, which said Exhibit "B" is by this reference made a part hereof.

(c) That on or about August 14, 1941, said plaintiff did deliver to each of the stockholders of said defendant corporation, except the said plaintiff, a letter in words and figures as set forth in Exhibit "C" attached to this complaint, which said Exhibit "C" is by this reference made a part hereof, together with a copy of the said demand, Exhibit "A" to this complaint.

XII.

That plaintiff has failed to obtain any action by said directors or said stockholders of said defendant corporation due to the said domination, control, and direction of said defendant corporation by the said Ballagh and the said Miller, and due to said scheme and conspiracy as hereinbefore set forth.

Wherefore, plaintiff prays for a judgment of this Court in favor of said defendant corporation and against said defendants Ballagh and Miller in

the sum of \$41,416.66, with interest thereon from the dates of the said respective excess payments of salaries and compensation, and for plaintiff's costs incurred by plaintiff in the commencement and prosecution of this action, and for appropriate attorney's fees for plaintiff's attorneys herein, said costs and attorney's fees to be paid out of such recovery as the defendant corporation may obtain in this action against the said defendants Ballagh and Miller; and that said plaintiff have such other and further relief as may be just.

CHICKERING & GREGORY,
DONALD Y. LAMONT,
LYON & LYON,
LEONARD S. LYON,
IRWIN L. FULLER,

811 W. Seventh Street
Los Angeles, California,
Attorneys for Plaintiff. [7]

EXHIBIT "A"

To the Board of Directors of Patterson-Ballagh Corporation, a California corporation:

Byron Jackson Co., a Delaware corporation, and a stockholder in Patterson-Ballagh Corporation at the present time and at all times herein mentioned, hereby makes demand upon you to commence and prosecute a suit in the name of and on behalf of said Patterson-Ballagh Corporation

against J. C. Ballagh and D. G. Miller on account of the following facts:

1. That said Ballagh and one C. L. Patterson, at all times subsequent to September 20, 1928 and up to on or about February 15, 1939, were the principal stockholders of Patterson-Ballagh Corporation, owning and controlling three-fourths ($\frac{3}{4}$) of the entire capital stock of said corporation, the remaining one-fourth ($\frac{1}{4}$) of such capital stock being owned and controlled by the undersigned; that said Patterson during said time was the president and a director of said Patterson-Ballagh Corporation, and said Ballagh was secretary-treasurer and a director of said Patterson-Ballagh Corporation, and said Ballagh and the said Patterson by said stock ownership controlled, dominated, and directed each and every of the acts of said Patterson-Ballagh Corporation. That on or about February 15, 1939, said Patterson resigned as president and director of said corporation, and the entire stock owned by said Patterson in said Patterson-Ballagh Corporation was sold to one D. G. Miller by said Patterson; said Miller was thereupon elected president and a director of said corporation on said February 15, 1939, and since that date has been and still is the president and a director of said corporation. That since February 15, 1939, the said Ballagh and the said Miller have connived and cooperated in directing the affairs [8] of said Patterson-Ballagh Corporation, and have at all times since said date dominated, controlled, and directed, and still do domin-

ate, control, and direct each and every of the acts and doings of said Patterson-Ballagh Corporation.

2. That as a part of a scheme and conspiracy said Ballagh and Miller, being in absolute control and domination of said corporation by reason of controlling three-fourths ($\frac{3}{4}$) of the capital stock of said corporation and by reason of controlling the Board of Directors of said corporation, and over the protest of the undersigned, did pay to said Ballagh grossly excessive salaries and compensation for services rendered said corporation, as follows:

That during the calendar year 1939 the said Ballagh was paid the total sum of \$15,000, and that said sum was grossly excessive as such salary and compensation in at least the amount of \$3,000; that during the calendar year 1940 the said Ballagh was paid the total sum of \$30,166.66, and that said sum was grossly excessive as such salary and compensation in at least the amount of \$18,166.66; that during the calendar year 1941 and prior to the time of serving this demand, the said Ballagh has been paid the sum of \$16,000, and that said sum was grossly excessive as such salary and compensation in at least the amount of \$9,000.

3. That as a part of said scheme and conspiracy said Ballagh and Miller, being in absolute control and domination of said corporation by reason of controlling three-fourths ($\frac{3}{4}$) of the capital stock of said corporation and by reason of controlling the Board of Directors of said corporation, and over the protest of the undersigned, did pay to said [9]

Miller grossly excessive salaries and compensation for services rendered said corporation, as follows:

That during the calendar year 1940 the said Miller was paid the sum of \$19,750, and that said sum was grossly excessive as such salary and compensation in at least the amount of \$7,750; that during the calendar year 1941 and prior to the time of serving this demand the said Miller has been paid the sum of \$10,500, and that said sum was grossly excessive as such salary and compensation in at least the amount of \$3,500.

4. The undersigned has at no time since February 15, 1939, received any dividends whatsoever from said Patterson-Ballagh Corporation, and the undersigned believes that said excessive salaries and compensation, as hereinbefore set forth, were determined by said Ballagh and said Miller in furtherance of the above mentioned scheme and conspiracy, and with the purpose and intent of depriving the undersigned of dividends accruing or to accrue to the undersigned from the said Patterson-Ballagh Corporation, and that the amounts of said salaries and compensation were neither fairly nor honestly determined by the said Ballagh and the said Miller.

That the undersigned hereby reiterates its demand upon the Board of Directors of said Patterson-Ballagh Corporation that suit be instituted and prosecuted by said Board in the name of and on behalf of the said corporation to collect from the

said Ballagh and the said Miller the amount of all excessive salaries and compensation.

Dated: August 5, 1941.

BYRON JACKSON CO.,
By W. N. BEADLE,
Vice President
By W. H. WIESE,
Secretary [10]

EXHIBIT "B"

August 8, 1941.

D. G. Miller, Esq., President,
Patterson-Ballagh Corporation,
1900 E. 65th St.,
Los Angeles, Calif.

Dear Sir:

Referring to the demand of Byron Jackson Co., bearing the date August 5, 1941, served upon the directors of Patterson-Ballagh Corporation, I, as a director of the last named corporation, urge that said corporation commence and prosecute a suit in accordance with such demand, and that you, as president, and the board of directors take all appropriate action in this regard.

Yours very truly,

(signed) E. S. DULIN.

ESD MJW

By registered mail

return receipt requested. [11]

EXHIBIT "C"

To the Stockholders of Patterson-Ballagh Corporation:

The undersigned, Byron Jackson Co., a stockholder of Patterson-Ballagh Corporation, has heretofore served upon the Board of Directors of the last named corporation a demand, a copy of which is herewith enclosed. Although sufficient time has elapsed since such service, no action has been taken by that Board in accordance with said demand, nor has said Board communicated with the undersigned. Under these circumstances, the undersigned deems it appropriate to appeal, and does hereby appeal, to the stockholders as a body for redress as to the matters contained in said demand and for action by the stockholders in order that compliance may be had with said demand. To this end the undersigned stands ready at all times to cooperate. A reply is requested as to whether you are willing to join with the undersigned in taking whatever legal action may be necessary in order to force Patterson-Ballagh Corporation to proceed in accordance with said demand.

Yours very truly,

BYRON JACKSON CO.

By W. N. BEADLE

Vice President.

Dated: August 14, 1941

[Endorsed]: Filed Sep. 10, 1941 [12]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS ON BE-
HALF OF DEFENDANTS AND EACH OF
THEM

To the Plaintiff Above Named and Its Attorneys
of Record:

You, and Each of You, Will Please Take Notice, that on the 27th day of October, 1941 at the hour of 10:00 o'clock a. m., or as soon thereafter as counsel may be heard, defendants Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller, and each of them, will move the above entitled court in Courtroom No. 5, Judge Leon R. Yankwich, presiding, located in the Federal Building, Main and Temple Streets, in the City of Los Angeles, State of California, for an order dismissing as to said defendants, and each of them, the complaint herein, on the ground that the court lacks jurisdiction of the subject matter of the complaint, and on the ground that plaintiff has failed to state any claim upon which relief can be granted.

Said motion will be based upon this notice of motion, the points and authorities appended here-

to, and upon the records and files of the above numbered case.

Dated this 9th day of October, 1941.

MUSICK AND BURRELL

By JAMES E. BEDNAR

Attorneys for defendants Pat-
terson-Ballagh Corporation,
J. C. Ballagh and D. G.
Miller

[Endorsed]: Filed Oct 9, 1941 [13]

At a stated term, to wit: The September Term, A. D. 1941 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof in the City of Los Angeles on Monday the 27th day of October in the year of our Lord one thousand nine hundred and forty-one.

Present:

The Honorable: Leon R. Yankwich, District Judge.

[Title of Cause.]

No. 1762-Y Civil

ORDER DENYING MOTION TO
DISMISS ACTION

This cause coming on for hearing motion of defendant for an order dismissing the action; Donald Y. Lamont, Esq., and Messrs. Lyon and Lyon by

Attorney Lyon appearing as counsel for the plaintiff; James E. Bednar, Esq., appearing as counsel for the defendants:

Attorney Bedner presents motion of defendants to dismiss the action; Attorney Lamont replies to motion; Attorney Bednar argues in rebuttal; and it is ordered that the motion be, and it is, denied, twenty days being allowed to the defendants to answer.

23/160 [14]

[Title of District Court and Cause]

ANSWER TO COMPLAINT

Come now defendants Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller, severally, and each of said defendants, in answer to the complaint on file herein, admits, denies and alleges as follows:

I.

Defendants admit all allegations of paragraph I of said complaint except that defendants deny that D. G. Miller has at all times mentioned therein been a citizen and resident of the County of Los Angeles, State of California, and in this connection defendants allege that said Miller is now and at all times mentioned in said paragraph I has been a citizen and resident of the [15] County of Los Angeles, State of California, except for a period

of approximately two and one-half years, extending from approximately the month of April, 1936, to approximately the month of October, 1938, during which period of approximately two and one-half years said Miller was at all times a citizen and resident of the County of San Joaquin, State of California.

II.

Answering paragraph II of said complaint, defendants admit that the jurisdiction of this court must, if present, be based upon diversity of citizenship, that this is a suit of a civil nature, that the amount involved exceeds the sum of \$3,000 exclusive of interest and costs, but defendants deny generally, specifically, and positively each and every other allegation therein contained, and every part thereof, which has not been heretofore specifically admitted in paragraph II of this answer, and particularly deny that the alleged and requisite diversity of citizenship is present.

III.

Answering paragraph III of said complaint, defendants admit that there is now, and that there has been at all times subsequent to September 20, 1928, a total of 1,000 shares of the capital stock of defendant Patterson-Ballagh Corporation issued and outstanding; admit that plaintiff now owns and controls, and has at all times subsequent to September 20, 1928, owned and controlled 250 shares of the capital stock of defendant Patterson-Ballagh Corporation, constituting one-fourth of its total is-

sued and outstanding capital stock; admit that from September 20, 1928, to on or about August 8, 1931, the remainder of defendant Patterson-Ballagh Corporation's issued and outstanding capital stock was beneficially owned and controlled as follows: 375 shares by J. C. Ballagh and 375 by C. L. Patterson; admit that from on or about August 8, 1931, to on or about February 15, 1939, said [16] remainder was beneficially owned and controlled as follows: 375 shares by C. L. Patterson, 125 shares by J. C. Ballagh and 250 shares by Highland Investment Corporation, Ltd., a corporation; admit that from on or about February 15, 1939, up to and including the present time said remainder has been and is now beneficially owned and controlled as follows: 125 shares by defendant J. C. Ballagh, 250 shares by Highland Investment Corporation, Ltd., a corporation, and 375 shares by defendant D. G. Miller; admit that at all times since September 20, 1928, up to and including the present time, the status of the record ownership of all of the issued and outstanding shares of defendant Patterson-Ballagh Corporation has been the same as the status of the beneficial ownership and control of said shares as hereinbefore alleged in paragraph III of this answer, with one exception, to wit: the 375 shares beneficially owned and controlled by defendant D. G. Miller from on or about February 15, 1939, up to and including the present time have during all of said times stood and now stand in the name of C. L. Patterson as the record owner thereof.

IV.

Answering paragraph IV of said complaint, defendants admit that from on or about February 15, 1939, to on or about June 27, 1939, the Board of Directors of defendant Patterson-Ballagh Corporation was composed of five persons, to wit, J. C. Ballagh, D. G. Miller, E. S. Dulin, H. C. Armington and H. W. Elliott; admit that from on or about June 27, 1939, up to and including the present time, the Board of Directors of defendant Patterson-Ballagh Corporation has been and is now composed of five persons, to wit, J. C. Ballagh, E. S. Dulin, D. G. Miller, H. C. Armington and Howard Burrell; admit that E. S. Dulin is now and at all times mentioned in the complaint has been the [17] President of plaintiff and that said Dulin has at all times represented and now represents plaintiff upon said Board; admit that D. G. Miller is now and at all times since February 15, 1939, has been President of Patterson-Ballagh Corporation, and that J. C. Ballagh is now and at all times since February 15, 1939, has been Secretary and Treasurer of Patterson-Ballagh Corporation.

Further answering said paragraph IV defendants deny generally, specifically, and positively each and every allegation therein contained, and every part thereof, which has not been heretofore specifically admitted in paragraph IV of this answer.

V.

Answering paragraph V of said complaint, defendants deny generally, specifically, and positively

each and every allegation therein contained, and every part thereof.

VI.

Answering paragraph VI of said complaint, defendants admit that during the year 1939 defendant Patterson-Ballagh Corporation paid to defendant J. C. Ballagh as compensation for services rendered by said Ballagh to and for said corporation during said year, the sum of \$15,000; admit that during the calendar year 1940 defendant Patterson-Ballagh Corporation paid to defendant J. C. Ballagh as compensation for services rendered by said Ballagh to and for said corporation during said year, the sum of \$30,166.66, and that E. S. Dulin objected to the payment of \$10,000 of said sum; admit that during the calendar year 1941 and prior to the filing of the complaint herein, defendant Patterson-Ballagh Corporation paid to defendant J. C. Ballagh as compensation for services rendered by said Ballagh to and for said corporation during said time, the sum of \$16,000, and that E. S. Dulin objected to the payment of \$7,000 of said sum. [18]

Further answering said paragraph VI, defendants deny generally, specifically, and positively each and every allegation therein contained, and every part thereof, which has not been heretofore specifically admitted in paragraph VI of this answer.

VII.

Answering paragraph VII of said complaint, defendants admit that during the calendar year 1940, defendant Patterson-Ballagh Corporation paid to

defendant D. G. Miller as compensation for services rendered by said Miller to and for said corporation during said year, the sum of \$19,750; admit that during the calendar year 1941 and prior to the filing of the complaint herein, defendant Patterson-Ballagh Corporation paid to defendant D. G. Miller as compensation for services rendered by said Miller to and for said corporation during said time, the sum of \$10,500.

Further answering said paragraph VII, defendants deny generally, specifically, and positively, each and every allegation therein contained, and every part thereof, which has not been heretofore specifically admitted in paragraph VII of this answer.

VIII.

Answering paragraph VIII of said complaint, defendants admit that Patterson-Ballagh Corporation has paid no dividends on any of its issued and outstanding shares since February 15, 1939, but deny generally, specifically, and positively each and every allegation therein contained, and every part thereof, which has not been heretofore specifically admitted in paragraph VIII of this answer.

IX.

Defendants deny generally, specifically, and positively each and every allegation contained in paragraph IX of said complaint, and every part thereof. [19]

X.

Answering paragraph X of said complaint, defendants admit that plaintiff is now, and ever since

on or about September 20, 1928, has been, a stockholder of defendant Patterson-Ballagh Corporation, but deny generally, specifically, and positively each and every allegation therein contained, and every part thereof, which has not heretofore been specifically admitted in paragraph X of this answer.

XI.

Answering paragraph XI of said complaint, defendants admit that on or about August 5, 1941, they received a communication, purportedly from plaintiff, in words and figures as set forth in Exhibit A attached to the complaint; admit that on or about August 8, 1941, E. S. Dulin delivered to defendant Patterson-Ballagh Corporation a communication in words and figures as set forth in Exhibit B attached to the complaint and that said E. S. Dulin is now, and at all times mentioned in the complaint, since June 13, 1930, has been, plaintiff's President and the representative of plaintiff upon the Board of Directors of defendant Patterson-Ballagh Corporation; admit that on or about August 14, 1941, defendants Ballagh and Miller received through the mail a communication in words and figures as set forth in Exhibit C attached to the complaint, together with a communication in words and figures as set forth in Exhibit A attached to the complaint.

Further answering each and all of the allegations of paragraph XI of said complaint, which have not been heretofore specifically admitted in paragraph XI of this answer, defendants have no information

or belief upon the subject sufficient to enable them to answer said allegations, and placing their denial on that ground, defendants deny generally, specifically, and [20] positively each and every allegation contained in paragraph XI of said complaint, and every part thereof, which has not been heretofore specifically admitted in paragraph XI of this answer.

XII.

Defendants deny generally, specifically, and positively each and every allegation contained in paragraph XII of said complaint, and every part thereof.

Wherefore, defendants pray:

(1) That plaintiff take nothing by reason of the complaint on file herein;

(2) That defendants recover their costs of suit incurred herein;

(3) For such other and further relief as may appear just and equitable to the court.

MUSICK AND BURRELL

HOWARD BURRELL

Attorneys for defendants

(Affidavit of Service by Mail)

[Endorsed]: Filed Nov. 28, 1941. [21]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Di-

vision of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 2nd day of July in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Dave W. Ling, District Judge

[Title of Cause.]

No. 1762-Y Civil

TRIAL

This cause coming on for hearing; Donald Y. Lamont, Esq., of the law firm of Messrs Chickering and Gregory of San Francisco, California, appearing as counsel for the plaintiff; and Messrs. Musick and Burrell by J. E. Bednar, Esq., appearing as counsel for the defendants; and C. W. McClain, Court Reporter, being present and reporting the testimony and the proceedings:

Attorneys Bednar and Lamont, respectively, make statements. Attorney Bednar files amendment to answer. Attorney Lamont makes opening statement of facts to the Court in behalf of the plaintiff, and Attorney Bednar makes a statement to the Court. The following exhibits are offered and admitted into evidence:

Plf's Ex. 1—Copies of minutes A-1, appearing in Appendix to depositions of Ballagh and Miller, filed June 29, 1942.

Plf's Ex. 2—Five (5) sheets showing salaries, etc., Patterson Ballagh corp., et al.

Plf's Ex. 3—Number of sheets, dividends paid to J. C. Ballagh and C. L. Patterson, Byron Jackson Co., salaries, etc., and dividends paid to Schurman and Dulin.

Plf's Ex. 4—One (1) sheet—sales. [22]

Plf's Ex. 5-a—Audit report, 11/30/39, Patterson-Ballagh Corp.

Plf's Ex. 5-b—Audit report, 11/30/40, Patterson-Ballagh Corp.

Plf's Ex. 5-c—Audit report, 11/30/41, Patterson-Ballagh Corp.

Plf's Ex. 6-a—Folder—balance sheet, 12/31/38, Patterson-Ballagh Corp.

Plf's Ex. 6-b—Statement of assets and liabilities, 11/30/40, Patterson-Ballagh Corp.

Plf's Ex. 6-c—Statement of assets and liabilities, 12/31/40, Patterson-Ballagh Corp.

Plf's Ex. 7—Letter, 2 pages, 1/23/42, to J. C. Ballagh, etc., from Joseph "H" Pennington.

Plf's Ex. 8—Letter, 2/1/37, to J. C. Ballagh from Dulin.

Plf's Ex. 9—Letter, 3/23/37, to C. L. Patterson, President from Dulin.

Plf's Ex. 10—Telegram, 9/25/38, to Patterson-Ballagh Corp. from C. S. Dulin.

Plf's Ex. 11—Copy of letter, 7/20/39, to Patterson-Ballagh Corp., from.....

Plf's Ex. 12—Letter, 9/8/39, to Patterson-Ballagh Corp. from Dulin.

Plf's Ex. 13—Letter, 2/25/41, to D. G. Miller, President, from Dulin.

Plf's Ex. 14—Letter to Patterson-Ballagh Corp. from Dulin, 6/25/41.

Plf's Ex. 15-a—Agreement between Byron Jackson Pump Co. to Patterson, etc., 9/20/28.

Plf's Ex. 15-b—Agreement between Patterson-Ballagh Corp. and Jackson, etc., 9/20/28.

Plf's Ex. 15-c—Agreement between Byron Jackson Pump Co. and Patterson, etc., 9/20/28.

Plf's Ex. 15-d—Agreement between Patterson, et al., and Byron Jackson Pump Co., 9/20/28.

At 11:55 A. M. court recesses until 2 P. M. At 2 P. M. court reconvenes and all being present as before, the Court orders that the trial proceed. The following exhibit is offered and admitted into evidence:

Plf's Ex. 16—Copy of 3 page letter, 6/29/39, to Byron Jackson Co. from Patterson-Ballagh Corp.

[23]

J. C. Ballagh, at 2:10 P. M., is called, sworn, and testifies for the plaintiff on direct examination by Attorney Lamont. There is no cross-examination of this witness. The following exhibits are either offered and admitted into evidence or marked for identification, as indicated:

Deft's Ex. A—Chart, gross annual sales, etc.

Deft's Ex. B—Chart, sale of lip protectors, etc.

Deft's Ex. C for Ident.—Non-lip protector.

Deft's Ex. D for Ident.—Lip protector.

Deft's Ex. E—Catalogue of Patterson Ballagh.

Deft's Ex. F—Chart, cumulative dollar return on investment.

At 3:17 P. M. court recesses. At 3:25 P. M. court

reconvenes and all being present as before, J. C. Ballagh resumes the stand and testifies further on direct examination by Attorney Lamont, and there is no cross-examination. The following exhibits are offered and admitted into evidence:

Deft's Ex. G—Chart indicating year by year increase in dollar sales.

Deft's Ex. H—Copy of patent, No. 2,272,395, to James C. Ballagh.

De Mont George Miller, at 3:43 P. M., is called, sworn, and testifies for the plaintiff on direct examination by Attorney Lamont, and at 4:23 P. M., on cross-examination by Attorney Bednar. The following exhibits are offered and admitted into evidence:

Plf's Ex. 17-a—Copy of patent 2,285,742 to De-Mont G. Miller.

Plf's Ex. 17-b—copy of patent 2,239,159 to De-Mont G. Miller.

Plf's Ex. 18-a—Graph-distribution of profits, etc.

Plf's Ex. 18-b—Graph-percentage of profits.

Plf's Ex. 18-c—Graph-comparison of executive salaries.

Plf'd Ex. 18-d—Graph-distribution of corporate payments, etc.

At 4:30 P. M. the Court declares a recess in the trial of this cause until 10 A. M., July 3, 1942.
28/272 [24]

[Title of District Court and Cause.]

AMENDMENT TO ANSWER

Permission of the court having been first obtained, defendants Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller, severally, and each of said defendants, hereby amend their answers on file herein by adding thereto the following allegations:

I.

At all times mentioned in the complaint one E. S. Dulin was the duly appointed and acting agent of plaintiff and was acting within the scope of his authority.

II.

On January 21, 1941, an annual meeting of shareholders of defendant was duly and regularly held at which there were [25] present in person or by proxy all of the shareholders of defendant corporation including said E. S. Dulin, who, at that time represented not only the one share standing in his name but also the two hundred forty-nine (249) shares standing in the name of plaintiff.

III.

At said annual meeting of shareholders J. C. Ballagh nominated H. C. Armington, J. C. Ballagh, Howard Burrell, E. S. Dulin and D. G. Miller to serve as directors during the ensuing year or until the election and appointment of their successors. After said nominations it was moved by

J. C. Ballagh, seconded by E. S. Dulin, and unanimously carried that the nominations be closed and that the Secretary of the corporation be instructed to cast a ballot on behalf of all shareholders present in person or by proxy for and in favor of the persons nominated as directors as aforesaid. The Secretary thereupon cast said ballot and said nominees were duly elected directors for the ensuing year or until election or appointment of their successors.

IV.

On January 21, 1941, following the meeting of shareholders hereinbefore set forth, there was duly and regularly held a meeting of the Board of Directors of defendant corporation, at which all directors including said E. S. Dulin were present. At said meeting H. C. Armington nominated the following persons for the following offices:

For President—D. G. Miller

For Secretary and Treasurer—J. C. Ballagh

For Assistant Secretary and Assistant Treasurer—M. G. Nolan. [26]

There were no further nominations, and on motion of H. C. Armington, seconded by Howard Burrell, and unanimously carried by the vote of all persons including said E. S. Dulin, it was resolved that the nominations be closed and that the persons nominated as officers for the year be elected and appointed as such by acclamation.

V.

Prior to the election of said directors as aforesaid and prior to the election of said officers as aforesaid, said E. S. Dulin, representing plaintiff herein, had no notice or knowledge that the attitude of the remaining directors in respect to the matters of compensation complained of in the complaint would be any different for the ensuing year of 1941 from their attitude concerning the same for the preceding year of 1940. Prior to the election of said directors and officers said E. S. Dulin, representing plaintiff, had full knowledge of the attitude of the remaining directors and of the officers in respect to the matters of compensation complained of in the complaint.

VI.

By reason of the foregoing plaintiff has waived any right that it might have to complain of the matters set forth in the complaint herein.

Respectfully submitted,

MUSICK AND BURRELL

HOWARD BURRELL

Attorneys for defendants

[Endorsed]: Filed July 2, 1942. [27]

[Title of District Court and Cause.]

VERIFICATION OF COMPLAINT

State of California

County of Los Angeles—ss.

E. S. Dulin, being first duly sworn, deposes and says that he is and at all times mentioned in the complaint in the above entitled action was the President of Byron Jackson Co., a Delaware corporation, and makes this verification for and on behalf of said corporation; that he has read the complaint in the above entitled action and knows the contents thereof and that the same is true of his own knowledge.

E. S. DULIN

Subscribed and sworn to before me this 3rd day of July, 1942.

[Seal]

IRENE J. KNUDSEN

Notary Public in and for said County and State.

[Endorsed]: Filed Jul 3, 1942 [28]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles

on Friday the 3rd day of July in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Dave W. Ling, District Judge

[Title of Cause.]

No. 1762-YY Civil

This cause coming on for further trial without a jury; Donald Y. Lamont, Esq., appearing as counsel for the plaintiff; Messrs. Musick and Burrell by James E. Bednar, Esq., appearing as counsel for the defendants; and C. W. McClain, Court Reporter, being present and reporting the proceedings:

E. S. Dulin, at 9:58 A.M., is called, sworn, and testifies for the plaintiff on direct examination by Attorney Lamont, and at 10:32 A.M., is cross-examined by Attorney Bednar.

At 10:57 A.M. court recesses. At 11:06 A.M. court reconvenes and all being present as before, E. S. Dulin resumes the stand and testifies further on cross-examination by Attorney Bednar, on re-direct examination by Attorney Lamont, and on re-cross-examination by Attorney Bednar. The following exhibit is offered and admitted into evidence:

Defts' Ex. I—Letter, 3/27/40, to Howard Burrell from E. S. Dulin

E. S. Bunch, at 11:30 A.M., is called, sworn, and testifies for the plaintiff on direct examination by Attorney Lamont, and is examined on voir dire by Attorney Bednar. [29]

John D. Chesnut, at 11:46 A.M., is called, sworn,

and testifies for the plaintiff on direct examination by Attorney Lamont.

At 11:50 A.M. the plaintiff rests.

Howard Burrell, at 11:52 A.M., is called, sworn, and testifies for the defendant on direct examination by Attorney Bednar.

At 12:07 P.M. court recesses until 2 P.M. At 2 P.M. court reconvenes and all being present as before, the following exhibit is offered and admitted in evidence:

Plf's Ex. 19—Two (2) sheets containing executive salaries, etc.

Howard Burrell, heretofore sworn, resumes the stand and testifies further on direct examination by Attorney Bednar, and at 2:20 P.M. on cross-examination by Attorney Lamont.

Ray Walden Morris, at 2:46 P.M., is called, sworn, and testifies for the defendant on direct examination by Attorney Bednar and at 3:03 P.M. on cross-examination by Attorney Lamont. The following exhibit is offered and admitted in evidence:

Defts' Ex. J—Photograph.

At 3:15 P.M. court recesses. At 3:27 P.M. court reconvenes and all being present as before, J. C. Ballagh, heretofore sworn, resumes the stand and testifies for the defendants on direct examination by Attorney Bednar. The following exhibits are offered and admitted in evidence:

Defts' Ex. K-1 to K-9 inclusive—Each being a photograph.

Defts' Ex. L—Copy of agreement, 7 pages, 10/8/40, between Bettis Rubber Co., Ltd., and Patterson-Ballagh Corp.

At 4:30 P.M. the Court declares a recess in the trial of this cause until July 6, 1942.

28/291

[30]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 6th day of July in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Dave W. Ling, District Judge

[Title of Cause.]

No. 1762-Y Civil

This cause coming on for further non-jury trial; Donald Y. Lamont, Esq., appearing as counsel for the plaintiff; Messrs. Musick and Burrell by James E. Bednar, Esq., appearing as counsel for the defendants; and C. W. McClain, Court Reporter, being present and reporting the testimony and the proceedings:

J. C. Ballagh, heretofore sworn, continues testimony on direct examination by Attorney Bednar. The following exhibits are either offered and admitted in evidence or marked for identification, as indicated:

Defts' Ex. M—Photos of pipe wiper on circular (printed matter excluded).

Defts' Ex. N for ident.—Tubing protector.

At 11:10 A.M. court recesses. At 11:20 A.M. court reconvenes, and all being present as before, J. C. Ballagh continues testimony on direct examination by Attorney Bednar. The following exhibit is offered and admitted in evidence:

Defts' Ex. O—Photo of sucker rod wiper.

J. C. Ballagh testifies on cross-examination by Attorney Lamont. [31]

At 11:50 A.M. court recesses until 2 P.M.

John M. Grant, at 2 P.M., is called, sworn, and testifies for the plaintiff on direct examination by Attorney Lamont, on voir dire by Attorney Bednar, and at 2:14 P.M., on cross-examination by Attorney Bednar.

Walter H. Wiese, at 2:20 P.M., is called, sworn, and testifies for the plaintiff on direct examination by Attorney Lamont and on cross-examination by Attorney Bednar. The following exhibit is offered and admitted in evidence:

Plf's Ex. 20—Copy of Hopkins patent #1,619,728.

J. C. Ballagh, heretofore sworn, resumes the stand at 2:26 P.M. and testifies further on examination by Attorney Lamont, and at 2:53 P.M. on cross-examination by Attorney Bednar.

John D. Chesnut, heretofore sworn, resumes the stand at 2:56 P.M. and testifies on direct examination by Attorney Lamont. The following exhibits are offered and admitted by the plaintiff:

Plf's Ex. 21—Copy of Berryman patent, 1,913,018

Plf's Ex. 22—Copy of Bettis patent, 2,166,937

Plf's Ex. 23—Copy of Smith patent, 2,197,531

Plf's Ex. 24—Copy of Conrader patent, 831,143

Plf's Ex. 25—Copy of Penfield, et al., patent
2,215,377

Plf's Ex. 26—Copy of Ballagh patent, 2,272,395

Plf's Ex. 27—Copy of Woods patent, 1,764,769.

At 3:24 P.M. court recesses. At 3:35 P.M. court reconvenes and all being present as before:

The plaintiff rests. No further evidence is offered for the defendants.

At 3:40 P.M. it is ordered that this case be, and it hereby is, continued to July 7, 1942, at 10 A.M., for further trial.

28/324

[32]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 7th day of July in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Dave W. Ling, District Judge

[Title of Cause.]

No. 1762-Y Civil

This cause coming on for further hearing without

a jury; Donald Y. Lamont, Esq., appearing as counsel for the plaintiff; Messrs. Musick and Burrell by James E. Bednar, Esq., appearing as counsel for the defendants; and C. W. McClain, Court Reporter, being present and reporting the proceedings:

Attorney Lamont argues. At 10:54 A.M. court recesses. At 11:03 A.M. court reconvenes, and all being present as before, Attorney Bednar argues.

At noon court recesses until 2 P.M. At 2 P.M. court reconvenes herein and all being present as before, Attorney Bednar argues further. At 2:16 P.M. Attorney Lamont argues further.

It is ordered that the cause be submitted.

28/340

[33]

[Title of District Court and Cause.]

NOTICE OF HEARING OF MOTION TO RE-
OPEN CASE TO ADMIT NEWLY DISCOVERED EVIDENCE

To the Plaintiff Above Named, and to Chickering & Gregory, Donald Y. Lamont, Lyon & Lyon, Leonard S. Lyon and Irwin L. Fuller, Its Attorneys:

You and Each of You Will Please Take Notice that on Monday, the 17th day of August, 1942, in the Courtroom of the above entitled Court in the Federal Building, Los Angeles, California, at 10:00 O'clock in the forenoon of said day, or as soon thereafter as the same may be heard, defendants, and each of them, will bring on for hearing their an-

nexed petition for reopening the case to admit newly discovered evidence.

Dated: July 31, 1942.

MUSICK AND BURRELL
HOWARD BURRELL

Attorneys for Defendants [34]

[Title of District Court and Cause.]

PETITION FOR REOPENING CASE TO
ADMIT NEWLY DISCOVERED EVIDENCE

Come now the defendants Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller, and each of them, by their attorneys and show to the Court:

Upon the trial of the above entitled cause, which commenced on or about July 1, 1942, and continued through July 7, 1942, defendants, and each of them, introduced into evidence the following facts:

(1) That defendant D. G. Miller had invented a certain [35] open hole tool joint protector, had applied for patents thereon, and had assigned all patent rights in and to the same to the defendant corporation, royalty free, and that the United States Patent Office had at the time of trial allowed two claims in reference to the patent application pending in reference to said device;

(2) That defendant J. C. Ballagh had invented a certain lip protector for drill pipe, had applied for patents thereon, and had assigned all patent

rights in and to the same to the defendant corporation, royalty free, but that at the time of trial no claims had been allowed upon the same, either by the United States Patent Office or the patent office of any other foreign nation.

In rebutting the foregoing evidence, plaintiff introduced evidence indicating that the patentability of the foregoing mentioned devices was doubtful.

Since the trial and submission of the case, defendants, and each of them, have for the first time received notice of the fact that the Dominion of Canada has granted and allowed patents on both of the foregoing mentioned devices.

Attached hereto and marked Exhibit 1 and hereby incorporated herein is a copy of a letter from the patent attorneys of defendant, who also happen to be one of the attorneys of record for the plaintiff herein, dated May 12, 1942, indicating that applications for patents in respect to the devices in question were filed in Canada on or about April 16, 1941.

Attached hereto marked Exhibit 2 is a true and exact copy of an assignment executed April 10, 1941, by defendant J. C. Ballagh, assigning to the defendant corporation any and all patent rights which might be granted in Canada in respect to the device referred to at the trial of this action as the lip protector. [36]

Attached hereto marked Exhibit 3 is a true and exact copy of an assignment executed April 10, 1941, by defendant D. G. Miller, assigning to the defendant corporation any and all patent rights which

might be granted in Canada in respect to the device referred to at the trial of this action as the open hole tool joint protector.

Attached hereto marked Exhibits 4-a and 4-b and hereby incorporated herein are true and exact copies of letters written July 7, 1942, by the patent attorneys of the defendant corporation, and received by defendants July 8, 1942, notifying defendants, and each of them, for the first time that the two patent applications in Canada in respect to the open hole tool joint protector and the lip protector had been officially allowed by the Canadian Patent Office.

Attached hereto marked Exhibits 5-a and 5-b, and hereby incorporated herein, are copies of the original notices of allowance issued by the Canadian Patent Office in respect to the applications for patent upon the aforementioned lip protector and upon the aforementioned open hole tool joint protector respectively.

The newly discovered evidence, to wit, the notices of allowance from the Canadian Patent Office, indicate that, contrary to the evidence and contentions of plaintiff, the two devices in question are plainly patentable.

The newly discovered evidence, to wit, the allowance of patent by the Canadian Patent Office upon the two devices hereinbefore mentioned was not brought to the attention of the defendants, or any of them, until after the above entitled case had been tried and the case submitted, as more fully appears from the affidavit of James E. Bednar, at-

tached hereto as Exhibit 6, and hereby incorporated herein.

Wherefore, defendants, and each of them, move this Court [37] for an order reopening this case and receiving in evidence upon the hearing of this motion, the originals of the exhibits attached hereto and authorizing defendants to substitute true and exact copies in the record for said originals.

Upon the hearing of this motion defendants will read and refer to the papers and pleadings on file in this case, and as points and authorities will rely upon the following:

Reopening Case Because of Newly Discovered Evidence Is Proper. Walker on Patents (Deller's Ed.) Vol. 4, Sec. 902A and cases cited.

Reopening Case Is Addressed to Discretion of the Court. Walker on Patents (Deller's Ed.) Vol. 4, Sec. 902A and cases cited.

Dated this 31st day of July, 1942.

MUSICK AND BURRELL

HOWARD BURRELL

Attorneys for defendants

Good Cause Appearing Therefor, It Is Ordered that the time of service of the foregoing notice of hearing and petition for reopening is so shortened that service thereof upon the attorneys for plaintiff prior to 5:00 P.M. on the day of Au-

gust, 1942, is adjudged to be sufficient notice of the proceedings mentioned therein.

Dated: this day of August, 1942.

.....
Judge of the District Court
[38]

EXHIBIT 1

Law Offices
Lyon & Lyon
Patent and Trademark Causes
811 West Seventh Street
Los Angeles
May 12, 1941

Patterson-Ballagh Corporation
1900 East 65th Street
Los Angeles, California

Attention Mr. James C. Ballagh

Gentlemen:

Re: Canadian Patent Applications
Our docket Nos. 51/18-19

This is to advise you of the filing of the above applications as follows:

51/18

James C. Ballagh Filed Apr. 16, 1941 Ser. No.
482127

51/19

DeMont G. Miller Filed Apr. 16, 1941 Ser. No.
482128

We enclose copies of the applications as filed, and will keep you advised of further developments.

Very truly yours,
LYON & LYON

L. B.

Enc

[Endorsed]: Deft. Exhibit No. 28. Filed 8/17, 1942. Edmund L. Smith, Clerk. By J. M. Horn, Deputy Clerk. [39]

EXHIBIT 2

51/18

ASSIGNMENT

In consideration of one dollar to me paid by Patterson-Ballagh Corporation of the City of Los Angeles, State of California, I do hereby sell and assign to the said Patterson-Ballagh Corporation all my right, title and interest in and to my invention for new and useful improvements in Protector for Drill Pipe as fully set forth and described in the specification which I have signed preparatory to obtaining a patent in Canada; and I do hereby authorize and request the Commissioner of Patents to issue the said patent to the said Patterson-Ballagh Corporation in accordance with this assignment.

Witness my hand and seal this 10 day of April, 1941, at the City of Los Angeles, State of California.

JAMES COURTENAY BALLAGH. [40]

51/18

State of California,
County of Los Angeles,
United States of America,—ss.

I, Howard Coleman Armington of Los Angeles, in the County of Los Angeles, State of California, United States of America, make oath and say:

1. That I was personally present and did see James Courtenay Ballagh, named in the attached assignment, who is personally known to me to be the person named thereon, duly sign and execute the same for the purpose named thereon.

2. That I am the subscribing witness to the said assignment.

HOWARD COLEMAN ARM-
INGTON

Sworn to Before Me at Los Angeles, in the County of Los Angeles, State of California, United States of America, this 10 day of April, 1941.

(Seal) MAY G. NOLAN,

Notary Public in and for the County of Los Angeles, State of California. My Commission Expires March 7, 1943.

[Endorsed]: Deft. Exhibit No. 29. Filed 8/17, 1942. Edmund L. Smith, Clerk. By J. M. Horn, Deputy Clerk. [41]

EXHIBIT 3

51/19

ASSIGNMENT

In consideration of one dollar to me paid by Patterson-Ballagh Corporation of the City of Los Angeles, State of California, United States of America, I do hereby sell and assign to the said Patterson-Ballagh Corporation all my right, title and interest in and to my invention for new and useful improvements in Open Hole Tool Joint Protectors, as fully set forth and described in the specification which I have signed preparatory to obtaining a patent in Canada; and I do hereby authorize and request the Commissioner of Patents to issue the said patent to the said Patterson-Ballagh Corporation in accordance with this assignment.

Witness my hand and seal this 10 day of April, 1941, at the City of Los Angeles, State of California, United States of America.

DeMONT GEORGE MILLER

[42]

51/19

State of California,
County of Los Angeles,
United States of America—ss:

I, Howard Coleman Armington, of Los Angeles, in the County of Los Angeles, State of California, United States of America, make oath and say:

1. That I was personally present and did see DeMont George Miller, named in the attached assignment, who is personally known to me to be the person named thereon, duly sign and execute the same for the purpose named thereon.

2. That I am the subscribing witness to the said assignment.

HOWARD COLEMAN ARM-
INGTON.

Sworn to Before Me at Los Angeles, in the County of Los Angeles, State of California, United States of America, this 10 day of April, 1941.

(Seal) MAY G. NOLAN,

Notary Public in and for the County of Los Angeles, State of California. My Commission Expires March 7, 1943.

[Endorsed]: Deft. Exhibit No. 30. Filed 8/17, 1942. Edmund L. Smith, Clerk. By J. M. Horn, Deputy Clerk. [43]

EXHIBIT 4-a

Law Offices
Lyon & Lyon
Patent and Trademark Causes

811 West Seventh Street
Los Angeles

July 7, 1942.

Patterson-Ballagh Corporation,
1900 East 65th Street
Los Angeles, California.

Gentlemen:

Re: Canadian Patent Application

Serial No. 482128 on "Open Hole Tool
Joint Protector"—DeMont G. Miller.

We are pleased to advise you that the above identified Canadian Patent application was officially allowed by the Canadian Patent Office on June 23, 1942.

The final Government fee of \$20.00 must be paid not later than six months from the date of allowance, or by December 23, 1942. To this amount must be added \$2.50 for the charge of our Canadian associate for making the payment into the Patent Office and receiving and forwarding the patent to us.

Please let us have your instructions and remittance for \$22.50 at such time as you wish the patent to issue, and in any event not later than December

10, 1942, so that the same may reach the Canadian Patent Office in sufficient time.

Yours very truly,

IJK

LYON & LYON

[Endorsed]: Deft. Exhibit No. 31. Filed 8/17 1942. Edmund L. Smith, Clerk. By J. M. Horn, Deputy Clerk. [44]

EXHIBIT 4-b

Law Offices
Lyon & Lyon
Patent and Trademark Causes
811 West Seventh Street
Los Angeles

July 7, 1942.

Patterson-Ballagh Corporation,
1900 East 65th Street
Los Angeles, California.

Gentlemen:

Re: Canadian Patent Application

Serial No. 482127 on "Protector for Drill
Pipe"—J. C. Ballagh

We are pleased to advise you that the above identified application was officially allowed by the Canadian Patent Office June 23, 1942.

The final Government fee of \$20.00 must be paid not later than six months from the date of allow-

ance, or by December 23, 1942. To this amount must be added \$2.50 to cover our Canadian associate's charge for making the payment into the Patent Office in Canada and receiving and forwarding the patent to us.

Please let us have your instructions and remittance at such time as you wish the patent to issue and in any event not later than December 10, 1942 so that the same may reach the Canadian Patent Office in sufficient time.

Yours very truly,

IJK

LYON & LYON.

[Endorsed]: Deft. Exhibit No. 32. Filed 8/17, 1942. Edmund L. Smith, Clerk. By J. M. Horn, Deputy Clerk. [45]

EXHIBIT 5-a

Petent and Copyright Office
Communication Should Be Addressed
"The Commissioner of Patents"
"Ottawa"

When Writing on This Subject Refer to
Serial Number of Application
Patent Office
Canada

Ottawa, June 23, 1942.

NOTICE OF ALLOWANCE

APPLICATION FOR PATENT

Serial No. 482127,
Inventor J. C. Ballagh,
Invention Protector for Drill Pipe,

I beg to inform you that the above application for patent has been examined and allowed.

The final fee, Twenty Dollars, must be paid not later than six months from the date of this notice of allowance.

The serial number of application, full name of inventor, title of invention, and date of allowance Must be given when paying final fee.

The preparation of the patent for signing and sealing will require about six weeks, and such work will not be undertaken until after the payment of the final fee. The Office delivers a Patent upon the day of its date.

The Patent will be published in the Canadian Patent Office Record of the date of the issue of the Patent.

Your obedient servant,

J. T. MITCHELL

Commissioner

To Messrs. Smart & Biggar, Victoria Bldg., Ottawa,
Ont.

Circular 12. 20,000-6-3-41.

[Endorsed]: Deft. Exhibit No. 33. Filed 8/17, 1942. Edmund L. Smith, Clerk. By J. M. Horn, Deputy Clerk. [46]

EXHIBIT 5-b

Patent and Copyright Office
Communications Should Be Addressed
"The Commissioner of Patents"

"Ottawa"

When Writing on This Subject Refer to
Serial Number of Application

Patent Office

Canada

Ottawa, June 23, 1942.

NOTICE OF ALLOWANCE

APPLICATION FOR PATENT

Serial No. 482128,

Inventor De M. G. Miller,

Invention Open Hole Tool Joint Protector,

I beg to inform you that the above application for patent has been examined and allowed.

The final fee, Twenty Dollars, must be paid not later than six months from the date of this notice of allowance.

The serial number of application, full name of inventor, title of invention, and date of allowance Must be given when paying final fee.

The preparation of the patent for signing and sealing will require about six weeks, and such work will not be undertaken until after the payment of the final fee. The Office delivers a Patent upon the day of its date.

The Patent will be published in the Canadian Patent Office Record of the date of the issue of the Patent.

Your obedient servant,

J. T. MITCHELL

Commissioner

To Messrs. Smart & Biggar, Victoria Bldg., Ottawa,
Ont.

Circular 12. 20,000-6-3-41.

[Endorsed]: Deft. Exhibit No. 34. Filed 8/17, 1942. Edmund L. Smith, Clerk. By J. M. Horn, Deputy Clerk. [47]

EXHIBIT 6

AFFIDAVIT OF JAMES E. BEDNAR

State of California,
County of Los Angeles—ss.

James E. Bednar, being first duly sworn, deposes and says: That he is associated with the firm of Musick and Burrell and Howard Burrell, the attorneys for the defendants, and each of them, herein, and that he participated in the trial of the above entitled case; that the trial of the above entitled case commenced on or about July 2, 1942, and continued until the afternoon of July 7, 1942.

In the trial of said case plaintiff introduced evidence to the effect that and contended that said devices referred to at the trial as the lip protector and the open hole tool joint protector were of doubtful patentability.

Affiant is informed and believes, and therefore states that on July 8, 1942, after the trial and submission of the above entitled cause, defendants received notice from their patent attorneys, Lyon & Lyon, which firm is acting as associate counsel for plaintiff in the instant case, that the Canadian Patent Office had allowed a patent upon the application of defendant D. G. Miller in respect to the open hole tool joint protector, and a patent upon the application of defendant J. C. Ballagh in respect to the lip protector. [48]

That it appears by reason of the exhibits attached to this petition that defendant D. G. Miller, on April

16, 1941, filed an application with the Canadian Patent Office, Serial No. 482128 in respect to the open hole tool joint protector; that on April 10, 1941, said defendant assigned all patent rights that might be obtained upon said application to the defendant corporation, free of royalty; that on June 23, 1942, this application for patent was allowed and that on July 8, 1942, defendants received notice of the same for the first time.

That it appears by reason of the exhibits attached to this petition that defendant J. C. Ballagh, on April 16, 1941, filed an application with the Canadian Patent Office, Serial No. 482127 in respect to the lip protector; that on April 10, 1941, said defendant assigned all patent rights that might be obtained upon said application to the defendant corporation, free of royalty; that on June 23, 1942, said application for patent in respect to the lip protector was allowed by the Canadian Patent Office, and that on July 8, 1942, defendants, and each of them, received notice of the same for the first time.

That affiant has been handling the trial of the above entitled case on behalf of the defendants and was necessarily absent from the City of Los Angeles from July 7, 1942, until July 26, 1942, for the purpose of trying another case in Tulsa, Oklahoma; that the foregoing newly discovered evidence was not brought to affiant's attention until his return to his office on July 27.

That this motion is not being made for any purpose of delay, but for the purpose of indicating to

the Court that the devices in question are definitely patentable.

JAMES E. BEDNAR

Subscribed and Sworn To before me this 31st day of July, 1942.

[Seal] ESSIE McCORMICK,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Aug. 4, 1942. Edmund L. Smith, Clerk. By P. D. Hooser, Deputy Clerk. [49]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 17th day of August in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Dave W. Ling, District Judge.

[Title of Cause.]

No. 1762-Y Civil

ORDER THAT MOTION TO RE-OPEN CASE
STAND SUBMITTED

This cause coming on for hearing on motion of defendants to re-open the case to admit newly dis-

covered evidence, pursuant to notice filed August 4, 1942; Donald Y. Lamont, Esq., appearing as counsel for the plaintiff; J. E. Bednar, Esq., appearing as counsel for the defendants; and H. A. Dewing, Court Reporter, being present and reporting the proceedings:

Attorney Lamont makes an objection to motion to re-open. Attorney Bednar makes a statement and offers the following exhibits in behalf of the defendants and it is ordered that the said exhibits be admitted in evidence, to wit:

Defts' Ex. 28—Copy of letter, dated 5/12/41, from Lyon & Lyon to Patterson-Ballagh Corp.

Defts' Ex. 29—Assignment by James Courtenay Ballagh to Patterson-Ballagh Corp. together with affidavit of Howard Coleman Armington.

Defts' Ex. 30—Assignment by DeMont George Miller to Patterson-Ballagh Corp. together with affidavit of Howard Coleman Armington.

Defts' Ex. 31—Copy of letter, dated 7/7/42, from Lyon & Lyon to Patterson-Ballagh Corp.

Defts' Ex. 32—Copy of Letter, dated 7/7/42, from Lyon & Lyon to Patterson-Ballagh Corp. [50]

Defts' Ex. 33—"Notice of Allowance", from J. T. Mitchell, Commissioner, Patent Office, Ottawa, Canada, to Messrs. Smart & Biggar, Victoria Bldg., Ottawa, Ont.

Defts' Ex. 34—"Notice of Allowance" from J. T. Mitchell, Commissioner, Patent Office, Ottawa, Ontario, Canada, to Messrs. Smart & Biggar, Victoria Bldg., Ottawa, Ont.

It is ordered that the said motion to re-open stand submitted.

28/942 [51]

At a stated term, to wit: The February Term, A. D. 1942 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 31st day of August in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Dave W. Ling, District Judge.

[Title of Cause.]

No. 1762-Y Civil

ORDER FINDING IN FAVOR OF
DEFENDANTS

This cause having been heretofore heard by the Court, on evidence both oral and documentary, and counsel having argued the cause, and the Court having duly considered the same and being fully advised,

The Court now finds in favor of the defendants, and it is ordered that Findings of Fact, Conclusions of Law, and Judgment be entered accordingly, counsel to prepare and present formal Findings and Judgment pursuant to local Rule 8.

29/110 [52]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled cause came on regularly for trial on July 1, 1942, at 10:00 o'clock A.M. in Courtroom No. 4 of the above entitled Court, Honorable Dave W. Ling, presiding, without a jury; motion of defendants, and each of them, to file an amendment to their answer was duly and regularly granted on July 1, 1942, and the case continued until July 2, 1942; thereafter the cause was tried on the 2nd, 3rd, 6th and 7th days of July, 1942, plaintiff Byron Jackson Co., a corporation, being represented by its attorneys, Chickering & Gregory and Lyon & Lyon, by Donald Y. Lamont, and defendants Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller being represented [53] by their attorneys, Musick and Burrell, by James E. Bednar; after argument by counsel, said cause was submitted to the Court for its decision on July 7, 1942; thereafter, without opposition and pursuant to motion of said defendants, and each of them, said cause was duly and regularly reopened August 17, 1942, to admit certain newly discovered evidence on behalf of said defendants, and each of them, and was thereupon resubmitted to the Court for its decision on August 17, 1942; evidence, both oral and documentary, having been introduced and presented, and the cause having

been argued by counsel and submitted to the Court for its decision as aforesaid, the Court now makes its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

I.

It is true that plaintiff, Byron Jackson Co., is now, and at all times mentioned herein has been, a corporation organized and existing under and by virtue of the laws of the State of Delaware; that defendant Patterson-Ballagh Corporation is now, and at all times mentioned herein has been, a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the County of Los Angeles, State of California, in the Southern District of California, Central Division; that defendant J. C. Ballagh is now, and at all times mentioned herein has been, a citizen and resident of the County of Los Angeles, State of California; and that defendant D. G. Miller is now, and since October, 1938, has been, a citizen and resident of the County of Los Angeles, State of California. [54]

II.

It is true that the jurisdiction of this Court is based upon diversity of citizenship; that this is a suit of a civil nature between citizens of different states; and that the amount in controversy exceeds, exclusive of interest and costs, the sum of \$3,000.

III.

It is true that defendant Patterson-Ballagh Corporation now has, and at all times subsequent to September 20, 1928, has had, exactly 1,000 shares of its capital stock issued and outstanding; that defendant J. C. Ballagh is now, and continuously since September 20, 1928, has been, the record and beneficial owner of 125 shares of defendant Patterson-Ballagh Corporation; that defendant J. C. Ballagh and his wife are now, and continuously since on or about August 8, 1931, have been, the beneficial owners of 250 shares of defendant Patterson-Ballagh Corporation, which said 250 shares now stand, and at all times since on or about August 8, 1931, have stood, in the name of Highland Investment Corporation, Ltd., a corporation, as the record owner thereof; that said Highland Investment Corporation, Ltd., a corporation, is now, and at all times since on or about August 8, 1931, has been owned entirely by defendant J. C. Ballagh and his wife; that defendant D. G. Miller is now, and continuously since on or about February 15, 1939, has been, the beneficial owner of 375 shares of defendant Patterson-Ballagh Corporation, which said 375 shares now stand, and continuously since prior to February 15, 1939, have stood, in the name of one C. L. Patterson, as the record owner thereof; that defendant D. G. Miller purchased said 375 shares from said C. L. Patterson on or about February 15, 1939; that plaintiff is now, and continuously since September 20, 1928, has been the [55] beneficial owner of 250 shares of defendant

Patterson-Ballagh Corporation, and all of said 250 shares now stand, and during said period of time have stood, in the name of plaintiff as the record owner thereof, except for one share which now stands, and during said period of time has stood, in the name of a representative and nominee of plaintiff.

IV.

It is true that, at the present time, and at all times since February 15, 1939, the board of directors of defendant Patterson-Ballagh Corporation has consisted of five persons; that from February 15, 1939, to June 27, 1939, said board of directors was composed of H. C. Armington, H. W. Elliott, E. S. Dulin, defendant J. C. Ballagh, and defendant D. G. Miller; that said board is now, and continuously since June 27, 1939, has been, composed of H. C. Armington, E. S. Dulin, Howard Burrell, defendant J. C. Ballagh and defendant D. G. Miller; that said E. S. Dulin is now, and continuously since prior to October 1, 1936, has been, a member of the said board of directors of defendant Patterson-Ballagh Corporation; that said E. S. Dulin is now, and continuously since prior to October 1, 1936, has been the president of plaintiff and plaintiff's representative upon the said board of directors of defendant Patterson-Ballagh Corporation.

It is further true that defendant D. G. Miller is now, and at all times since February 15, 1939, has been, president of defendant Patterson-Ballagh Corporation, and that defendant J. C. Ballagh is now, and at all times since prior to September 20, 1928,

has been, the secretary-treasurer of defendant Patterson-Ballagh Corporation.

Each and every allegation set forth in paragraph IV of plaintiff's complaint herein is untrue, except for those allegations [56] which are specifically found to be true in these findings.

V.

It is true that since February 15, 1939, defendant J. C. Ballagh, as secretary-treasurer, and defendant D. G. Miller, as president, have, pursuant to and subject to the instructions, advice, supervision and direction of the board of directors of defendant Patterson-Ballagh Corporation, directed the affairs of said corporation and carried on its business, and that at all times said individual defendants have discharged their duties as such officers faithfully, efficiently, conscientiously, loyally and meritoriously.

Each and every allegation set forth in paragraph V of plaintiff's complaint herein is untrue, except for those allegations which are specifically found to be true in these findings.

VI.

It is true that, pursuant to and in accordance with resolutions duly, regularly and legally adopted by the board of directors of defendant Patterson-Ballagh Corporation, but over the protest of said E. S. Dulin, plaintiff's representative upon said board, defendant Patterson-Ballagh Corporation paid to defendant J. C. Ballagh the following com-

compensation for services rendered by said defendant J. C. Ballagh to defendant Patterson-Ballagh Corporation: the total sum of \$15,000 during the calendar year 1939, the total sum of \$30,166.66 during the calendar year 1940, and the total sum of \$19,000 from January 1, 1941, to the time when plaintiff filed this action herein on September 10, 1941.

It is further true that the services rendered by defendant J. C. Ballagh to defendant Patterson-Ballagh Corporation from January 1, 1939, to the time of filing suit herein on September 10, 1941, were, are now and will continue to be of very [57] great value to said corporation, and that said services were performed loyally, efficiently, carefully and effectively.

It is further true that said compensation so paid to defendant J. C. Ballagh during the aforementioned periods of time was fair, just and reasonable as to the defendant Patterson-Ballagh Corporation at the various times it was authorized, approved and paid; and that defendant J. C. Ballagh did not at any time, as a member of the board of directors, vote upon any resolution concerning his own compensation. It is further true that every resolution of the board of directors concerning the aforementioned compensation of defendant J. C. Ballagh was adopted at meetings of said board when there was a legal quorum of said board present and that every such resolution was approved in good faith by an independent and disinterested majority of the directors present at such meetings.

It is further true that the compensation so paid

to defendant J. C. Ballagh during the calendar year 1939 was approved and ratified by a resolution duly, regularly and legally adopted by the beneficial and record owners of a majority of the issued and outstanding shares of Patterson-Ballagh Corporation at an annual meeting of said shareholders on January 16, 1940; that the compensation so paid to defendant J. C. Ballagh during the calendar year 1940 was approved and ratified by a resolution duly, regularly and legally adopted by the beneficial and record owners of a majority of the issued and outstanding shares of Patterson-Ballagh Corporation at an annual meeting of said shareholders on January 21, 1941; that the compensation so paid to defendant J. C. Ballagh from January 1, 1941, to the time when plaintiff filed suit herein on September 10, 1941, was approved and ratified by a resolution duly, regularly and legally adopted by the beneficial and record [58] owners of a majority of the issued and outstanding shares of Patterson-Ballagh Corporation at an annual meeting of said shareholders on January 20, 1942; and that the aforementioned three resolutions of shareholders approving the compensation so paid to defendant J. C. Ballagh as aforesaid were adopted in good faith, and without fraud, actual or constructive, by each and all of the shareholders voting for them.

Each and every allegation set forth in paragraph VI of plaintiff's complaint herein is untrue, except for those allegations which are specifically found to be true in these findings.

VII.

It is true that, pursuant to and in accordance with resolutions duly, regularly and legally adopted by the board of directors of defendant Patterson-Ballagh Corporation, said corporation paid to defendant D. G. Miller the following compensation for services rendered by said defendant D. G. Miller to defendant Patterson-Ballagh Corporation: the total sum of \$19,750 during the calendar year 1940, and the total sum of \$12,000 from January 1, 1941, to and including September 10, 1941, at which time plaintiff commenced its action herein. It is further true that, beginning in December, 1940, said E. S. Dulin, plaintiff's representative upon said board, objected to the compensation paid to defendant D. G. Miller as aforesaid.

It is further true that the services rendered by defendant D. G. Miller to defendant Patterson-Ballagh Corporation from January 1, 1940, to the time of filing suit herein on September 10, 1941, were, are now, and will continue to be of very substantial value to said corporation, and that said services were performed loyally, efficiently, carefully and effectively.

It is further true that said compensation so paid to [59] defendant D. G. Miller during the aforementioned periods of time was fair, just and reasonable as to the defendant Patterson-Ballagh Corporation at the various times it was authorized, approved and paid; and that defendant D. G. Miller did not at any time, as a member of the board of directors, vote upon any resolution concerning his

own compensation. It is further true that every resolution of the board of directors concerning the aforementioned compensation of defendant D. G. Miller was adopted at meetings of said board when there was a legal quorum of said board present and that every such resolution was approved in good faith by an independent and disinterested majority of the directors present at such meetings.

It is further true that the compensation so paid to defendant D. G. Miller during the calendar year 1940 was approved and ratified by a resolution duly, regularly and legally adopted by the beneficial and record owners of a majority of the issued and outstanding shares of Patterson-Ballagh Corporation at an annual meeting of said shareholders on January 21, 1941; that the compensation so paid to defendant D. G. Miller from January 1, 1941, to the time when plaintiff filed suit herein on September 10, 1941, was approved and ratified by a resolution duly, regularly and legally adopted by the beneficial and record owners of a majority of the issued and outstanding shares of Patterson-Ballagh Corporation at an annual meeting of said shareholders on January 20, 1942; and that the aforementioned two resolutions of shareholders approving the compensation so paid to defendant D. G. Miller as aforesaid were adopted in good faith, and without fraud, actual or constructive, by each and all of the shareholders voting for them.

Each and every allegation set forth in paragraph VII of [60] plaintiff's complaint herein is untrue,

except for those allegations which are specifically found to be true in these findings.

VIII.

It is true that defendant Patterson-Ballagh Corporation has not declared or paid any dividends to its shareholders since July, 1938.

Each and every allegation set forth in paragraphs VIII and IX of plaintiff's complaint herein is untrue, except for those allegations which are specifically found to be true in these findings.

IX.

It is true that plaintiff is now, and has been since September 20, 1928, a stockholder of defendant Patterson-Ballagh Corporation and that this action is not a collusive one to confer on a court of the United States jurisdiction of any action of which it would not otherwise have jurisdiction.

X.

It is true that, prior to the bringing of this action, plaintiff attempted to secure from the directors and stockholders of Patterson-Ballagh Corporation action by said corporation in the bringing and prosecution of this suit by taking the following steps: on or about August 5, 1941, plaintiff served upon the board of directors of defendant Patterson-Ballagh Corporation a demand in words and figures as set forth in Exhibit A attached to plaintiff's complaint herein; on or about August 8, 1941, plaintiff caused E. S. Dulin, who is, and at all times mentioned herein was, plaintiff's presi-

dent and the representative of plaintiff upon the board of directors of Patterson-Ballagh Corporation, to deliver to defendant D. G. Miller as president of said defendant corporation, a letter in words and figures as set forth in Exhibit B attached to [61] plaintiff's complaint herein; on or about August 14, 1941, plaintiff delivered to each stockholder of said defendant corporation, except plaintiff, a letter in words and figures as set forth in Exhibit C attached to plaintiff's complaint herein.

XI.

It is true that, prior to the filing of this suit, neither the directors nor the stockholders of defendant Patterson-Ballagh Corporation took any action in response to the demands of plaintiff as set forth in paragraph X of these findings.

Each and every allegation set forth in paragraph XII of plaintiff's complaint herein is untrue, except for those allegations which are specifically found to be true in these findings.

XII.

It is true that at all times mentioned in the complaint, E. S. Dulin was the duly appointed and acting agent of plaintiff, and was acting within the scope of his authority as such agent, in respect to the affairs of defendant Patterson-Ballagh Corporation; that on January 21, 1941, an annual meeting of shareholders of defendant Patterson-Ballagh Corporation was duly and regularly held at which there were present in person or by proxy all shareholders of said defendant corporation, in-

cluding said E. S. Dulin, who at that time represented the 250 issued and outstanding shares beneficially owned by plaintiff; that at said annual meeting, H. C. Armington, Howard Burrell, E. S. Dulin, defendant J. C. Ballagh and defendant D. G. Miller were nominated to serve as directors during the ensuing year, or until election or appointment of their successors; that after said nominations, it was moved by defendant J. C. Ballagh, seconded by said E. S. Dulin, and unanimously resolved that said nominations be closed and that the secretary of the corporation be instructed to cast a unanimous [62] ballot on behalf of all shareholders present in favor of the persons nominated as directors as aforesaid; that said secretary thereupon cast said ballot and said nominees were duly elected directors for the ensuing year; that on January 21, 1941, and following the meeting of shareholders hereinbefore referred to, a meeting of the board of directors of defendant Patterson-Ballagh Corporation was duly and regularly held, at which all directors, including said E. S. Dulin, were present; that at said board meeting, defendant D. G. Miller was nominated for president, defendant J. C. Ballagh was nominated for secretary and treasurer, and one M. G. Nolan was nominated for assistant secretary and assistant treasurer; that after said nominations, and on motion duly seconded and unanimously carried by the vote of all persons present, including said E. S. Dulin, it was resolved that all nominations

be closed and that the persons nominated as officers as aforesaid for the ensuing year be elected and appointed as such by acclamation; that prior to the election of said directors as aforesaid, and prior to the election of said officers as aforesaid, said E. S. Dulin, representing plaintiff, had no notice or knowledge that the attitude of said H. C. Armington, Howard Burrell, J. C. Ballagh, and D. G. Miller in respect to the matters of compensation complained of in the complaint would be any different for the ensuing year of 1941 from what said persons' attitude had been toward said compensation matters during 1940 when said H. C. Armington, Howard Burrell, J. C. Ballagh, and D. G. Miller likewise constituted four of the five directors on the board of Patterson-Ballagh Corporation; that, prior to participating in and approving the election of said persons as directors and officers on January 21, 1941, as aforesaid, said E. S. Dulin, representing plaintiff, knew the attitude of said persons concerning the compensation that [63] said persons considered should properly be paid to defendant J. C. Ballagh and defendant D. G. Miller during 1941; that plaintiff has waived any right that it might have to complain of the compensation paid to defendants J. C. Ballagh and D. G. Miller by defendant Patterson-Ballagh Corporation from January 1, 1941, to the time of filing suit herein on September 10, 1941.

CONCLUSIONS OF LAW

I.

That the compensation paid by defendant Pat-

terson-Ballagh Corporation to defendant J. C. Ballagh from January 1, 1939, to the time of filing suit herein on September 10, 1941, has been fair, just and reasonable as to said corporation at the various times that it was authorized, approved and paid.

II.

That the compensation paid by defendant Patterson-Ballagh Corporation to defendant D. G. Miller from January 1, 1940, to the time of filing suit herein on September 10, 1941, has been fair, just and reasonable as to said corporation at the various times that it was authorized, approved and paid.

III.

That plaintiff has waived any right to complain of the compensation paid by defendant Patterson-Ballagh Corporation to defendants J. C. Ballagh and D. G. Miller from January 1, 1941, to the time of filing suit herein on September 10, 1941.

IV.

That plaintiff is not entitled, either on its own behalf, or on behalf of Patterson-Ballagh Corporation, or otherwise, to any relief or recovery whatsoever against any of the defendants herein.

[64]

V.

That each of the defendants herein is entitled to recover of and from plaintiff his or its respective costs of suit incurred herein.

Judgment is ordered to be entered accordingly.

Dated this 29 day of September, 1942.

DAVE W LING

Judge of the United States
District Court

Approved as to form this -- day of -----, 1942.

CHICKERING & GREGORY

DONALD Y. LAMONT

LYON & LYON

LEONARD S. LYON

IRWIN L. FULLER

Attorneys for Plaintiff

Received copy of the within Findings of Fact
and Conclusions of Law this -- day of September,
1942.

CHICKERING & GREGORY

DONALD Y. LAMONT

LYON & LYON

LEONARD S. LYON

IRWIN L. FULLER

Attorneys for Plaintiff

[Endorsed]: Filed Sep. 30, 1942. [65]

In the District Court of the United States
Southern District of California
Central Division

Civil Action No. 1762-Y

BYRON JACKSON CO., a corporation,
Plaintiff,

vs.

PATTERSON-BALLAGH CORPORATION, a
corporation, J. C. BALLAGH and D. G. MILLER,
Defendants.

FINAL JUDGMENT

The above entitled cause came on regularly for trial on July 1, 1942, in Courtroom No. 4 of the above entitled Court, Honorable Dave W. Ling, Judge, presiding, without a jury, and was thereafter tried on July 2, 3, 6, 7 and August 17, 1942, plaintiff Byron Jackson Co., a corporation, being represented by its attorneys Chickering & Gregory and Lyon & Lyon, by Donald Y. Lamont, and defendants Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller being represented by their attorneys Musick and Burrell, by James E. Bednar; evidence, both oral and documentary, having been introduced, and the cause having been argued by counsel and submitted to the [66] Court for its decision, and the Court having made its written Findings of Fact and Conclusions of Law, and being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed that plaintiff take nothing by its action herein, either on its own behalf, or on behalf of defendant Patterson-Ballagh Corporation, or otherwise, and that defendants Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller do have and recover from plaintiff Byron Jackson Co., their costs and disbursements incurred herein and taxed in the sum of \$ -----

Dated this 29 day of Sept., 1942.

DAVE W. LING

Judge of the United States
District Court

Approved as to form this -- day of -----, 1942.

CHICKERING & GREGORY

DONALD Y. LAMONT

LYON & LYON

LEONARD S. LYON

IRWIN L. FULLER

Attorneys for Plaintiff

Received full and entire satisfaction on the within costs this 10th day of October 1942.

Witness: Edmund L. Smith, Clerk. By Theodore Hocke Deputy.

MUSICK & BURRELL

HOWARD BURRELL

Attorneys for Defendants

Judgment entered Sep. 30—1942 Docketed Sep. 30—1942 C. O. Book 11 Page 514 Edmund L. Smith, Clerk, By J. M. Horn, Deputy

Received copy of the within Final Judgment this
-- day of -----, 1942.

CHICKERING & GREGORY

DONALD Y. LAMONT

LYON & LYON

LEONARD S. LYON

IRWIN L. FULLER

Attorneys for Plaintiff

[Endorsed]: Filed Sep. 30, 1942 [67]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

To the Above Entitled Court and the Clerk Thereof,
and to the Above Named Defendants and Their
Attorneys:

Plaintiff above named moves the above entitled
Court for an order vacating and setting aside the
findings of fact and conclusions of law and the
judgment entered thereon upon September 30, 1942,
and granting a new trial in the above entitled action,
upon the following grounds:

(1) Errors in law occurring at the trial and
excepted to by the plaintiff.

(2) Insufficiency of the evidence to justify the
findings of fact and conclusions of law.

(3) Insufficiency of the evidence to justify the
judgment. [68]

(4) The said findings of fact and conclusions
of law are against law.

(5) The said judgment is against law.

Dated, October -----, 1942.

CHICKERING & GREGORY

DONALD Y. LAMONT

LYON & LYON

LEONARD S. LYON

IRWIN L. FULLER

Attorneys for Plaintiff.

[Endorsed]: Filed Oct 9, 1942. [69]

[Title of District Court and Cause.]

NOTICE OF MOTION OF PLAINTIFF FOR
A NEW TRIAL AND FOR A HEARING
THEREOF

To the Above Entitled Court and the Clerk Thereof,
and to the Above Named Defendants and Their
Attorneys:

Notice Is Hereby Given You, and Each of You,
that plaintiff in the above entitled action has filed,
or is about to file, a motion to vacate and set aside
the findings of fact and conclusions of law of the
Court made herein, and the judgment entered
thereon on September 30, 1942, and for a new trial
in the above entitled action, upon the grounds set
forth in said motion, copy of which motion is
herewith served upon you.

Notice Is Further Hereby Given You, and Each
of You, that on Monday, the 19th day of October,

1942, in the Court Room of the above entitled Court in the Federal Building, Los Angeles, [70] California, at 10:00 o'clock in the forenoon of said day, or as soon thereafter as the same may be heard, plaintiff will bring on said motion for hearing.

You Are Hereby Further Notified that said motion is based upon the minutes of the Court and all of the records and files in the above entitled action.

Dated, October 9th, 1942.

CHICKERING & GREGORY
DONALD Y. LAMONT
LYON & LYON
LEONARD S. LYON
IRWIN L. FULLER
Attorneys for Plaintiff.

[Endorsed]: Filed Oct 9, 1942 [71]

[Title of District Court and Cause.]

STIPULATION CONCERNING DISPOSITION
OF MOTION FOR NEW TRIAL

It Is Hereby Stipulated by and between the parties to the above entitled action, through their attorneys of record, that plaintiff's pending motion for new trial shall be heard and determined by Judge Dave W. Ling sitting at Phoenix, Arizona, upon briefs to be submitted by the parties as hereinafter set forth, without oral argument, and that

the decision and any order upon said motion made by said Judge Ling at Phoenix, Arizona, when transferred to and filed in the above entitled Court, shall have the same force and effect as if made by said Judge Ling within this District.

It is further stipulated that plaintiff will serve and file with the clerk of the above entitled court its opening brief [72] within ten days from the receipt by plaintiff's counsel of the exhibits sent by counsel for defendants to counsel for plaintiff at San Francisco; that counsel for defendants will serve and file with the Clerk of the above entitled court their answering brief within ten days after plaintiff's opening brief has been served and filed; that plaintiff may have five days from and after the receipt of defendants' answering brief in which to serve and file with the clerk of the above entitled court a reply thereto.

It is further stipulated that the clerk of the above entitled court shall forward to Judge Dave W. Ling the pleadings in the above entitled case, including plaintiff's motion for new trial and the respective briefs of the parties, to be filed as hereinbefore set forth, together with such exhibits and such parts of the Reporter's Transcript as Judge Dave W. Ling may desire; and that upon the serving and filing of the briefs as aforesaid the cause may stand submitted.

Dated this 2nd day of Nov, 1942.

CHICKERING & GREGORY

DONALD Y. LAMONT

LYON & LYON

LEONARD S. LYON

IRWIN L. FULLER

By IRWIN L. FULLER

Attorneys for Plaintiff

MUSICK AND BURRELL and

HOWARD BURRELL

By HOWARD BURRELL

Attorneys for Defendants

Approved and So Ordered this 2nd day of November, 1942. Mr. Fuller having stated that arrangement of stipulation is satisfactory to Judge Ling.

PAUL J. McCORMICK

Judge

[Endorsed]: Filed Nov. 2, 1942 [73]

At a stated term, to wit: The September Term, A. D. 1942 of the District Court of the United States of America, within and for, the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 30th day of November in the year of our Lord one thousand nine hundred and forty-two.

Present:

The Honorable: Leon R. Yankwich, District Judge

[Title of Cause.]

No. 1762-Y Civil

This cause coming on for hearing on motion for a new trial; I. L. Fuller, Esq., of Lyon & Lyon, appearing as counsel for Plaintiff, states that motion is under submission to Judge Ling on briefs by stipulation.

30/785

[74]

At a stated term, to wit: The February Term, A. D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 22nd day of February in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Dave W. Ling, District Judge

[Title of Cause.]

No. 1762-Y Civil

ORDER DENYING MOTION FOR NEW TRIAL

This cause came on for hearing on the motion of plaintiff for a new trial. Upon consideration

whereof, it is now here ordered that said motion be, and the same hereby is denied.

Dated: Phoenix, Arizona, February 19, 1943.

DAVE W. LING
Judge

32/184

[Endorsed]: Filed Feb 22, 1943 [75]

Dave W. Ling
District Judge

United States District Court
District of Arizona

Judge's Chambers
Phoenix, Arizona
March 9th, 1943.

Clerk, U. S. District Court,
Federal Building,
Los Angeles, Calif.

Re: Byron Jackson Co. v Patterson-
Ballagh Corporation, #1762-Y Civil

Dear Sir:

Counsel in the above matter have directed my attention to an error appearing in the order denying plaintiff's motion for a new trial filed February 22d.

The order recites "This cause came on for hearing on the motion of defendant for a new trial". It should be corrected to read "on the motion of

plaintiff". This is your authorization to make such correction by interlineation.

Very truly yours,

DAVE W LING

cc—Musick, Burrell & Pinney

Chickering & Gregory

DWL/b. [76]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF ORDER DENYING
NEW TRIAL

To the Plaintiff Above Named and to Messrs. Chickering & Gregory and Donald Y. Lamont, Esq., 111 Sutter Street, San Francisco, California, and Lyon & Lyon, Leonard S. Lyon, Esq., and Irwin L. Fuller, Esq., 811 West Seventh Street, Los Angeles, California, Its Attorneys:

You, and Each of You, Will Please Take Notice that the District Court of the United States, for the Southern District of California, Central Division, entered its order herein on the 19th day of February, 1943, denying the motion of plaintiff for a new trial in the cause above entitled.

Dated this 16th day of March, 1943.

MUSICK AND BURRELL and
HOWARD BURRELL

By ANSON B. JACKSON JR.

Attorneys for Defendants

[Endorsed]: Filed Mar. 17, 1943 [77]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS FOR THE NINTH
CIRCUIT UNDER RULE 73(b) OF THE
RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS OF THE UNITED
STATES

To Defendants Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller, and to Musick and Burrell and Howard Burrell, their attorneys:

Notice Is Hereby Given that Byron Jackson Co., a corporation, plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on September 30, 1942.

Dated, May 11, 1943.

DONALD Y. LAMONT
FREDERICK M. FISK
CHICKERING & GREGORY

111 Sutter Street,

San Francisco, California, [78]

LYON & LYON

LEONARD S. LYON

IRWIN L. FULLER

811 West Seventh Street,

Los Angeles, California,

Attorneys for Plaintiff.

[Endorsed]: Filed & Mailed Copy to Musick & Burrell, Attys. for Defts. May 15, 1943. [79]

[Title of District Court and Cause.]

COST BOND

Know All Men by These Presents, That:

Byron Jackson Co., a corporation, duly organized under the laws of the State of Delaware and having an office and principal place of business in Vernon, Los Angeles County, California, as principal, and Pacific Indemnity Company, a corporation duly organized under the laws of the State of California and having an office and principal place of business at Los Angeles, California, as surety, are held and firmly bound unto Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller, in the full and just sum of Two Hundred Fifty Dollars (\$250.00) to be paid to the said Patterson-Ballagh Corporation, a corporation, [80] J. C. Ballagh and D. G. Miller, their heirs, executors, administrators, successors or assigns, which payment well and truly to be paid the undersigned bind themselves by these presents.

Sealed with the seals of the undersigned and dated this 12 day of May, 1943, in the Year of our Lord One Thousand Nine Hundred and Forty-Three; and

Whereas, lately at a District Court of the United States for the Southern District of California, in a suit pending in said Court between Byron Jackson Co., a corporation, as plaintiff, and Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller, as defendants, a judgment was rendered against the said plaintiff and the said

plaintiff having filed in said Court a notice of appeal to reverse the said judgment in the afore-said suit on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, at a session of said Circuit Court of Appeals to be holden at Los Angeles in the State of California,

Now, the condition of the above obligation is such that if the said Byron Jackson Co. shall make payment of costs if the appeal be dismissed or the judgment affirmed, or of such costs as the Appellate Court may award if the judgment is modified, then the above obligation to be void, else to remain in full force and effect.

[Seal]

BYRON JACKSON CO.,

a corporation,

By C. H. NAJRO

Vice President

And -----

Secretary

Acknowledged before me this 12 day of May, 1943.

[Seal]

MARIE O. BERRY

Notary Public in and for the County of Los Angeles,
State of California

My Commission Expires March 15, 1947 [81]

[Seal]

PACIFIC INDEMNITY COM-
PANY, a California corporation,

By C. A. SHAVER, JR

Its Attorney in Fact

By -----

Its Attorney in Fact

State of California,
County of Los Angeles,—ss.

On this 12th day of May in the year one thousand nine hundred and 43 before me, Atala M. Carter a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared C. A. Shaver, Jr., known to me to be the duly authorized Attorney-in-Fact of Pacific Indemnity Company, and the same person whose name is subscribed to the within instrument as the Attorney-in-Fact of said Company, and the said C. A. Shaver, Jr. acknowledged to me that he subscribed the name of Pacific Indemnity Company, thereto as surety and his own name as Attorney-in-Fact.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal]

ATALA M. CARTER

Notary Public in and for Los Angeles County, State
of California

My Commission Expires May 28, 1946

[Endorsed]: Filed May 15, 1943 [82]

DOCKET ENTRIES

- Sept. 10, 1941—Fld compl for recovery of excess salaries & compensation Issd summons. Md JS-5
- Oct. 1, 1941—Fld. stip. & ord. defts. have to & incl. 10/10/41 to plead compl.
- Oct. 9, 1941—Fld. deft's not. of mo. to dismiss, retble. 10/27/41, 10 AM, & pts. auths. in suppt.
- Oct. 14, 1941—Fld. plf's. pts. & auths.
- Oct. 16, 1941—Fld. deft's reply. Memo of pts. & auths. in suppt. mo. to dismiss, etc.
- Oct. 24, 1941—Fld. plf's additional pts. & auths.
- Oct. 27, 1941—Ent. order denying defts mo to dismiss & allowing 20 days to answer
- Nov. 17, 1941—Fld. stip. & ord. that defts. have to & incl. 11/29/41 to plead.
- Nov. 28, 1941—Fld. Answer of deft's Patterson-Ballagh Corp., J. C. Ballagh & D. G. Miller to compl.
- Feb. 12, 1942—Ent ord comtg to 4-6-42 for setting.
- Mar. 25, 1942—Fld summons ret not served.
- Apr. 6, 1942—Ent ord settg for trial 6/30/42.
- June 26, 1942—Ent ord transf case to Cal of Jdg Ling & re-settg for trial.
- June 29, 1942—Fld depos. of J. C. Ballagh & D. G. Miller. Fld depos of E. S. Dulin & 1 deft exs together with plfs exhs. 1 to 13 incl
- July 1, 1942—Ent ord postponing hrg to 7-2-42.

- July 2, 1942—Ent proc on hrg & ord contg to 7-3-42 fur hrg. Ser 2 plfs writs. Fld 18 plfs exs. Fld 6 defts exs. Fld amendment to answer.
- July 3, 1942—Fld verification of compl. Ent proc on fur trial & ord contg fur trial to 7-6-42. Ser 3 plfs writs. Ser 2 writs for defts. Fld 1 plf ex. Fld 4 defts exs.
- July 6, 1942—Ent proc on fur trial & ord contg to 7-7-42 fur trial. Ser 2 plfs writs. Fld 8 pfs exs. Fld 2 defts exs.
- July 7, 1942—Ent proc on fur hrg & ent ord takg under submission before Jdg Dave W. Ling.
- Aug. 4, 1942—Fld not of hearing of motion to reopen case to admit newly discovered evidence 8-10-42.
- Aug. 17, 1942—Ent procs on hrg mo to reopen case to admit newly discovered evidence purs to not fld 8/4/42 & ent ord stand subm. Fld 7 defts exhs.
- Aug. 31, 1942—Ent findg & ord for jdgmt favor defts; counsel to prepare & present formal findgs & judg accord. Not. counsel.
- Sept. 1, 1942—Fld Reporter's Transe of final arguments of counsel.
- Sept. 30, 1942—Fld findgs of fact & Concls of law & fld & ent in Co Bk 11/514 Final Jdgmt in favor of defts Patterson-Ballagh Corp., a corp. & J. C. Ballagh & D. G. Miller for costs incurred herein. D. & I. Same. Made Report JS-6.

- Oct. 2, 1942—Fld not of entry of final jdgmt. Fld defts cost bill to be taxed 10 A.M. 10-5-42.
- Oct. 5, 1942—Taxed costs of defts at \$90.25. Dock & ent costs.
- Oct. 9, 1942—Fld mot & not of mot of plf for new trial to be heard 10-19-42.
- Oct. 10, 1942—Ent marginal satisf of costs. Dock same.
- Oct. 14, 1942—Fld. ans. pts. & auths. in oppos. to plf's mot. for new trial.
- Oct. 19, 1942—Ent ord contg 1 wk on mot for a new trial.
- Oct. 26, 1942—Ent ord contg 5 wks (11/30/42) to hear mo for new trial to be heard by Judge Ling.
- Nov. 2, 1942—Fld stip & ord thereon plfs mo for new trial be heard on briefs by Judge Ling sitting at Phoenix, Ariz.; plf to file openg brief whn 10 days receipt of exhs.; defts to file answg brief whn 10 days aft flg plfs brief; plf to have 5 days thereaft to file reply; further, clk to forward to J. Ling pleadings, etc.
- Nov. 12, 1942—Fld plfs opening brief on mo for new trial. [83]
- Nov. 16, 1942—Fld Reporter's Transcript of test & proc on trial.
- Nov. 23, 1942—Fld stip & ord thereon extendg time defts to file answrg briefs to & inc 12-3-42, plf 5 days thereaft.
- Nov. 30, 1942—Counsel state mo is under submission to Judge Ling on briefs fur stip.

- Dec. 2, 1942—Fld answering brief defts on mo for new trial.
- Dec. 4, 1942—Fld stip & ord thereon extending time plf to file reply brief to & inc 12-18-42.
- Dec. 18, 1942—Fld plfs closing brief on mo for new trial.
- Feb. 22, 1943—Fld & ent ord denying plfs. mo for a new trial.
- Mar. 12, 1943—Recd letter from Judge Dave W. Ling amendg ord dated 2/22/43 chang word “deft” to “plf” in denyg mo for a new trial. Made correction by interlineation.
- Mar. 17, 1943—Fld not of denial plfs mot for new trial.
- May 15, 1943—Fld not plf of appeal CCA & mailed copy to Musick & Burrell attys for deft. Fld cost bond on appeal. Fld designation contents rel on appeal.
- June 7, 1943—Fld stip re record on app. & ord re transmittal orig exhbs. to C.C.A. [84]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL UNDER RULE 75 (a) OF THE
RULES OF CIVIL PROCEDURE FOR THE
DISTRICT COURTS OF THE UNITED
STATES

Byron Jackson Co., a corporation, plaintiff above named, hereby designates as the record on appeal in the above entitled action and for inclusion and to be contained in such record the complete rec-

ord and all of the proceedings and all of the evidence in the action, and without limiting the generality thereof does hereby designate and specify that the following be included in said record:

(a) Certified copy of all entries concerning the above entitled action contained in the civil docket on file in the Clerk's office, commencing with September 10, 1941, the date of [85] the commencement of said action to the date hereof;

(b) Complaint, including all exhibits attached thereto;

(c) Stipulation and order granting defendants' time to plead to complaint, filed October 1, 1941;

(d) Defendants' notice of motion to dismiss, filed October 9, 1941;

(e) Minute order entered October 27, 1941, denying defendants' motion to dismiss, and allowing 20 days to answer;

(f) Stipulation and order granting defendants' time to plead, filed October 17, 1941;

(g) Answer of defendants to complaint, filed November 28, 1941;

(h) Minute order continuing case for setting, entered February 2, 1942;

(i) Summons filed March 25, 1942;

(j) Minute order setting case for trial, entered April 6, 1942;

(k) Minute order transferring case to calendar of Judge Ling, entered June 26, 1942;

(l) Depositions of J. C. Ballagh, D. G. Miller, and E. S. Dulin, together with all exhibits, filed June 29, 1942;

(m) Minute order postponing hearing, entered July 1, 1942;

(n) Proceedings on hearings and minute order continuing for further hearings, entered July 2, 1942, together with all plaintiff's and defendants' exhibits and defendants' amendment to answer, filed on said date;

(o) Verification of complaint, filed on July 3, 1942; also proceedings on trial and minute order concerning further trial, entered July 3, 1942; and also all plaintiff's and defendants' exhibits, filed July 3, 1942; [86]

(p) Proceedings on trial and minute orders concerning further trial, entered on July 6, 1942; also all plaintiff's and defendants' exhibits, filed on July 6, 1942;

(q) Proceedings concerning trial, entered July 7, 1942;

(r) Order taking cause under submission, entered July 7, 1942;

(s) Notice of motion to reopen the case to admit newly discovered evidence, filed August 4, 1942;

(t) Proceedings on hearing of motion to reopen, entered August 17, 1942; also amended order submitting motion to reopen case, entered on August 17, 1942; also all defendants' exhibits, filed on August 17, 1942;

(u) Findings and minute order for judgment in favor of defendants, entered August 31, 1942; also instructions to counsel regarding preparation of formal findings and judgment;

(v) Findings of Fact and Conclusions of Law, filed and entered on September 30, 1942;

(w) Final judgment, filed on September 30, 1942;

(x) Notice of entry of final judgment, filed October 2, 1942;

(y) Defendants' cost bill, filed on October 2, 1942;

(z) Order taxing costs, docketed and entered on October 5, 1942;

(aa) Motion, and notice of motion, for new trial, filed on October 9, 1942;

(bb) Marginal satisfaction of costs, entered and docketed October 10, 1942;

(cc) Minute order continuing hearing on motion for new trial, entered on October 19, 1942;

(dd) Minute order continuing hearing on motion for new trial, entered on October 26, 1942; [87]

(ee) Stipulation and order that motion for new trial be heard on briefs, filed and entered on November 2, 1942;

(ff) Reporter's transcript of testimony and proceedings on trial, filed on November 16, 1942;

(gg) Stipulation and order extending time to file answering briefs, filed and entered on November 23, 1942;

(hh) Stipulation regarding submission, entered in the docket on November 30, 1942;

(ii) Stipulation and order extending time to file reply brief, filed and entered on December 4, 1942;

(jj) Minute order denying motion for new trial, filed and entered on February 22, 1943;

(kk) Letter from Judge Dave W. Ling amending minute order dated February 22, 1943, received and entered on March 12, 1943;

(ll) Notice of denial of motion for new trial, filed on March 17, 1943;

(mm) Notice of appeal;

(nn) Cost bond on appeal;

(oo) The within designation of contents of record on appeal;

(pp) Certificate by Clerk of the United States District Court that the foregoing constitutes the complete and entire record, proceedings, and evidence in the said District Court.

Dated, May 14th, 1943.

CHICKERING & GREGORY
FREDERICK M. FISK
DONALD Y. LAMONT
111 Sutter Street
San Francisco, California

[88]

LYON & LYON
LEONARD S. LYON
IRWIN L. FULLER
811 West Seventh Street
Los Angeles, California.
Attorneys for Plaintiff.

[Endorsed]: Filed May 15, 1943. [89]

[Title of District Court and Cause.]

STIPULATION RE RECORD ON APPEAL
AND ORDER RE TRANSMITTAL OF ORI-
GINAL PAPERS AND EXHIBITS

It Is Hereby Stipulated by and between the parties hereto as follows:

(I) The following items, heretofore included in plaintiff-appellant's designation of contents of record on appeal filed herein May 15, 1943, shall be omitted by the Clerk from the record on appeal in the above entitled action:

Items (c), (f), (h), (i), (j), (k), (l), (m), (x), (y), (z), (bb), (cc), (dd), (gg) and (ii).

(II) All original papers and exhibits and the depositions of J. C. Ballagh, D. G. Miller and E. S. Dulin together with all [90] exhibits thereto, shall be transmitted by the Clerk of this court to the Clerk of the Circuit Court of Appeals for the Ninth Circuit as a part of the record on appeal.

(III) The Court may, if it approves, enter the order annexed hereto for the transmittal by the Clerk of this Court of the original papers and exhibits in the above entitled cause and the depositions of J. C. Ballagh, D. G. Miller and E. S. Dulin to the Clerk of the Circuit Court of Appeals for the Ninth Circuit

(IV) This stipulation and the order annexed

hereto shall be included by the Clerk of this court in the said record on appeal.

Dated this 7th day of June, 1943.

DONALD Y. LAMONT

LEONARD S. LYON

IRWIN L. FULLER

Attorneys for Plaintiff-
Appellant

MUSICK, BURRELL &
PINNEY

ANSON B. JACKSON, Jr.

Attorneys for Defendants-
Appellees

Approved and So Ordered this 7th day of June, 1943.

PAUL J. McCORMICK

Judge [91]

[Endorsed]: Filed Jun. 7, 1943.

[Title of District Court and Cause.]

ORDER RE TRANSMITTAL OF ORIGINAL
PAPERS AND EXHIBITS AND DEPOSI-
TIONS

It appearing that it is desirable that certain original papers and exhibits and depositions of J. C. Ballagh, D. G. Miller and E. S. Dulin together with all exhibits thereto, on file in the above entitled cause shall be sent to the Circuit Court of

Appeals for the Ninth Circuit in lieu of copies thereof, notice of appeal to that Court having been filed in this cause by plaintiff herein,

It Is Hereby Ordered, pursuant to Rule 75(i) of the Rules of Civil Procedure that the Clerk of this Court forward by express, all costs thereof to be paid by plaintiff-appellant, Byron Jackson Co., to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, all original papers and exhibits and the depositions of J. C. Ballagh, D. G. Miller and E. S. Dulin together [92] with all exhibits thereto, as a part of the record on appeal, said original papers, exhibits and depositions to be held by the Clerk of said Appellate Court pending the appeal herein and to be returned by said Clerk of said Appellate Court to the Clerk of this Court upon the determination of said appeal, unless otherwise provided by the rules of said Appellate Court or by the order of said Appellate Court.

Dated this 7th day of June, 1943.

PAUL J. McCORMICK

United States District Judge

[Endorsed]: Filed June 7, 1943. [93]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of

California, do hereby certify that the foregoing pages numbered from 1 to 93 inclusive contain full, true and correct copies of: Complaint; Notice of Motion to Dismiss on Behalf of Defendants and Each of Them; Minute Order Entered October 27, 1941; Answer to Complaint; Minute Order Entered July 2, 1942; Amendment to Answer; Verification of Complaint; Minute Orders Entered July 3, 1942, July 6, 1942 and July 7, 1942 respectively; Notice of Hearing of Motion to Reopen Case to Admit Newly Discovered Evidence; Petition for Reopening Case to Admit Newly Discovered Evidence; Minute Orders Entered August 17, 1942 and August 31, 1942 respectively; Findings of Fact and Conclusions of Law; Final Judgment; Motion for New Trial; Notice of Motion of Plaintiff for a New Trial and for a Hearing Thereof; Stipulation Concerning Disposition of Motion for New Trial; Minute Orders Entered November 30, 1942 and February 22, 1943 respectively; Letter from Judge Dave W. Ling to Clerk, U. S. District Court; Notice; Notice of Appeal; Cost Bond; Docket Entries; Designation of Contents of Record on Appeal; Stipulation re. record on Appeal and Order re. Transmittal of Original Papers and Exhibits which, together with Original Reporter's Transcript, Original Exhibits and Original Depositions and Exhibits thereto transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for comparing, correcting and certifying the above record amount

to \$21.75 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 19 day of June, 1943.

[Seal]

EDMUND L. SMITH

Clerk

By THEODORE HOCKE

Deputy Clerk.

[Title of District Court and Cause.]

TESTIMONY

Los Angeles, California

Thursday, July 2, 1942

10:00 o'clock A. M.

The Clerk: Byron Jackson Company v. Patterson-Ballagh Corporation.

Mr. Bednar: Ready for the defendants.

Mr. Lamont: Ready for the plaintiff.

Mr. Bednar: There are a few preliminary matters that I would like to take up first. First, on behalf of the defendant, I would like to file an amendment to our answer. Mr. Lamont has received a copy of it for the plaintiff, and the matter covered in the amendment was taken up in some depositions taken a few months ago.

Mr. Lamont: The only remark I have to make on that is this: Counsel and I have just finished the trial of another case involving the same parties, and if counsel will agree that this will be the last one, I have no objection.

Mr. Bednar: This is the first amendment I have asked for.

Mr. Lamont: Will it be the last one?

Mr. Bednar: We can take that up later. My second motion is that at this time I would like to move to dismiss this action, because the complaint on file herein is not verified under Rule 23(b).

The Court: Well, you can make your motion. Now will someone state the nature of this action?

[2*]

Mr. Lamont: Yes, if your Honor please. I will be as brief as I possibly can. This is a representative suit, where a minority stockholder is suing on behalf of a corporation. Byron Jackson Company owns one-quarter of the outstanding shares of stock of 1,000 shares. We have owned for some years 250 shares of the 1,000, and we are claiming excessive salaries were paid to the executives of the company. I will get to the salaries later. But that is the gist of it, and I don't think there are any more issues except the amount of the salaries.

Mr. Bednar: That is all that I know of.

Mr. Lamont: No question of jurisdiction. Counsel raised the question of diversity of citizenship, that the amount involved is in excess of \$3,000, but on the question of diversity of citizenship I think counsel claimed before Judge Yankwich that the question of diversity should depend on the jurisdiction.

Patterson-Ballagh is a defendant, and there are other defendants, and Judge Yankwich ruled in

* Page numbering appearing at top of page of original Reporter's Transcript.

our favor, that the diversity depends upon the citizenship of the plaintiff, a Delaware corporation, and the other three defendants are residents of California. You have denied one other thing as to jurisdiction, namely, that, according to the rules, it has to be alleged in a suit of this type that it is not collusive, in order to obtain the jurisdiction of this court. I don't know what counsel has in mind in that re- [3] gard, but I think the best answer that I see that it is not collusive is the fact that the three defendants are represented by the same attorney. As to us, I don't know who we could have colluded with in this case. The denial of diversity of citizenship is based upon the contention that the complaint sets forth a derivative action by plaintiff, as a minority stockholder, on behalf of defendant Patterson-Ballagh Corporation, and in California is considered by the California courts to be a trustee for the corporation. And the rule that has been enforced by the federal courts with reference to suits brought by trustees is that for the purpose of diversity of citizenship the citizenship of the trustee is determined by the citizenship of the beneficial interests, and on that basis we claim the plaintiff is trustee for Patterson-Ballagh Corporation, a California corporation, although that corporation is the defendant, and that by reason of that the citizenship of plaintiff is California and the citizenship of the individual defendants is California, and therefore there is no diversity of citizenship.

I am simply going to touch the high points of this case in my opening statement, and if the court wants

to know more about any particular matter I will be glad to answer, if I can.

This is a small corporation, with a capitalization of \$200,000. Everything went along very nicely until about the year 1939, when the defendant Miller bought into the com- [4] pany. From then on salaries were raised. We are not making any contention that they are not entitled to a decent salary. In fact, each one is entitled to \$1,000 a month. Over that we have our doubts. In 1939 Mr. Miller raised his own salary to \$19,750, and in 1939 the salary of Mr. Ballagh was raised to \$15,000, and we claim that is \$3,000 excessive. In 1940, with no appreciable raise in the earnings of the company, salaries were boosted. Mr. Ballagh in 1940 took \$30,166.66 from the company. Mr. Miller also saw that his own salary was boosted to \$19,750. In other words, the total of their salaries in 1940 amounted to \$49,916.66, practically \$50,000. That was one-quarter of the capital. In 1941—and of course we are a little embarrassed, because the bonuses are very largely paid at the end of the year—our action started in September, 1941—but up to that time Mr. Ballagh had taken \$16,000 and Mr. Miller had taken \$10,500, making a total of \$26,500 to September 10th.

We are also going to prove, naturally, the nature of the company. The company owns one plant in Los Angeles, and you might call it a semi-plant in Houston, Texas, and the rest of their activities are simply of the nature of sales agencies. The number of employees ranged from 25 to 35. We are not

dealing with a large company. It is a small company, that had no financial problems at all. They had nothing specially to supervise. It is a manufacturing company manufacturing a specialty, and the difficulties of manage- [5] ment should not be very great.

In addition to that, the majority of holders of the stock owned three-quarters and we owned one-quarter. In February of 1939 Mr. Miller came in. He did three things which are most significant here. He first of all stopped our dividends. We haven't had a dividend since. He boosted salaries, as I have shown, and, besides that, we had a royalty agreement with the company which was paying us about \$18,000 a year, and the agreement was repudiated. That is in litigation in Judge Hollzer's court. In other words, it was a question of getting money out of the company in some way that doesn't benefit us, and that is the reason we come before this court here.

There are five directors on the board. Mr. Dulin, who is president of the Byron Jackson Company, represented the minority, and the other four directors consist of the two defendants, Mr. Burrell, who is attorney for the defendant company, and an employee of the company, and we were outnumbered four to one in the directorship. We were also outnumbered in stock, so we didn't have very much to say about the management of the organization.

These salaries were increased at a time when the earnings would not warrant it, and, as far as I

know, nothing warranted it. In 1940 the increase was made on a company statement which turned out to be inaccurate, and we are going to prove that by the company's auditor later on. Instead of large earnings in 1940, on which the [6] raises were based, they amounted to something like \$50,000. And in 1941, there were profits of about the same type, just about the same comparison, about \$50,000. So this was protested against by us. I will say very frankly that we believe a stockholder in a company should get some recognition, and that is the reason we are in court here.

Mr. Bednar: I just want to make a very short answer. In the first place, the statements that counsel for plaintiff has made are quite general; that, for instance, Mr. Miller, during a period of time—the important period of time in this case is from approximately January 1, 1939, to September 10, 1941, when the action was filed—that during 1939, Mr. Miller, for example, drew \$1,000 a month, and in March of 1940 we will show that Mr. Miller, at a board meeting at which Mr. Dulin was present, was voted \$1500 a month, and Mr. Miller has been drawing that \$1500 a month until September 10, 1941, at the time this action was filed.

In Mr. Ballagh's case, Mr. Ballagh was likewise voted \$2,000 a month at the same meeting, the same meeting at which Mr. Miller received the \$1500 a month. Mr. Dulin objected to Mr. Ballagh drawing the raised compensation. We feel that we will show that Mr. Dulin was not sufficiently acquainted

with the affairs of the defendant corporation, that he spent practically not time, on an annual basis, discussing the problems of the defendant corporation with the officers and directors, and that he made no objection to the [7] salaries until after the patent license agreement had been repudiated by the defendant corporation in the other suit in Judge Hollzer's court. Prior to that time it was perfectly agreeable, but after that time he made the objections. We will show that, despite these objections which they have had to salaries, Mr. Dulin at every meeting at which he was present, at which directors were elected, voted for the same directors, knowing their ideas on compensation, and that he, as one of the directors, voted for the same officers at every meeting at which he was present and at which officers were elected.

We will show, furthermore, that in October 1938, just about two or three months prior to the period in question, that Mr. Dulin voted, in fact moved, that Mr. Ballagh be paid \$1500 a month for performing the duties that he performed during the period of time in question, and that Mr. Dulin at the time moved that Mr. Patterson, who was the predecessor of Mr. Miller and performed the same duties that Mr. Miller was performing, that Mr. Dulin voted that Mr. Patterson get \$1500. In October, 1938, Mr. Dulin thought \$1500 was enough compensation.

On the subject of whether or not the company's statement was correct, we believe the evidence will show that the company's statement was announced

to be tentative, and that plaintiff should have known, at any rate, that there were certain items, consisting of reserves for contingent liabilities, as to which no attempt was made to set them up on these statements, and that the final audit of the year, and which was put out by certified public accountants, was to be the final document, and that the others were a tentative indication of how the business was going, and we will show various factors in justification of the salaries these men were receiving. One of those factors is, of course, the duties these men have been performing, and the time they have spent in working for the corporation. And we will show that they performed very valuable functions, notably in the field of invention.

I believe we will be able to show that, while Mr. Lamont refers to it as being a very small business, that it is a very important business. It has to do with the selling of rubber specialties in the field of oil tools. The business itself is of a limited nature and very uncertain, and must depend upon the patent aspects of the corporation and its ability to keep abreast of the trade.

Mr. Lamont: There is one correction that I want to make. Mr. Bednar said that I said 1929 when I should have said 1939, and the other is that the company is capitalized for \$100,000 and not \$200,000.

Mr. Bednar: Not the stated capital but the entire capital of the company.

Mr. Lamont: Have you a copy of the minute book?

Mr. Bednar: I don't have a copy. I have the minute [9] book.

Mr. Lamont: I am only going to put in Section 3 of Article III, salaries. All I care about is one section. I am going to keep the record as short as possible.

Section 3 of Article III of the By-Laws reads as follows: "The officers may receive only such salaries as the Board of Directors may from time to time determine. Until the salary of an officer has been fixed by resolution of the Board of Directors, such officer shall serve without compensation."

[10]

I point that out to show that there is no carte-blanche in these by-laws as to fixing salaries, and as I pointed out, it is an instance of directors dealing with themselves. In a case of that kind the burden of proof is not on us; it is really on the directors who fix their own salaries. I think the real principle of law is as I have stated it.

I might state to the court that Mr. Patterson was one of the original founders of this business, he and Mr. Ballagh, and Mr. Patterson sold out to Mr. Miller, and that is when our trouble started.

I would like to offer in evidence the minutes of the company attached to the depositions, which means from the 1st day of October, 1936, up to the time of filing this suit.

Mr. Bednar: I haven't had a chance to check this at all, but I am perfectly agreeable to it going in.

Mr. Lamont: I want to read a few things from

the minutes, if the court will indulge me. I refer to the minutes of January 29, 1937. I will say to start with that we were opposed to some of their salaries before Mr. Miller came in, but not at all to the extent that we were afterwards, and we consistently objected to the amounts the officers were drawing for some years back. For instance, in this meeting of January 27, 1937, it is said:

“Upon motion duly made and seconded the following Resolution was adopted: [11]

“Be It Resolved, that the salaries prevailing for the past year of the two executive officers are hereby approved.

“Mr. Patterson and Mr. Ballagh voted in the affirmative, and Mr. Dulin voted in the negative, on the foregoing resolution.

“Mr. Dulin stated that, in his opinion, from the preliminary financial statement rendered the company's financial condition has not allowed the administrative salaries being paid which, in his opinion, are excessive, and further, the dividends declared during the year should not have been paid.”

It isn't a question of Byron Jackson trying to cripple this company by asking for dividends. This very statement shows that he wanted the company to get along, but he didn't like to have it taken out in salaries.

“Taking into consideration the condition of the business, the volume of sales, as a director and a stockholder, he urged that the administrative salaries be adjusted downward and that

no further dividends be paid until the company is in a greatly improved financial position.”

Mr. Bednar: Are these exhibits to receive an exhibit number?

Mr. Lamont: I think so. I am introducing them at this [12] time.

The Clerk: Let me mark that book, then.

Mr. Lamont: They are part of the depositions.

Mr. Bednar: What is the date of the minutes?

Mr. Lamont: They run from October 1, 1936, up to the time of the filing of this suit, and they were supplied by counsel, so I assume they are correct.

The Clerk: That will be Plaintiff's Exhibit 1.

PLAINTIFF'S EXHIBIT No. 1

APPENDIX

Copies of Minutes Appearing in Minute Books of Patterson-Ballagh Corporation, Commencing October 1, 1936, and Up to September 10, 1941.

CALL AND WAIVER OF NOTICE OF SPECIAL MEETING OF BOARD OF DIRECTORS OF PATTERSON-BALLAGH CORPORATION, LTD.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors of said corporation, hereby give our written consent

Plaintiff's Exhibit No. 1—(Continued)

to the holding of a special meeting of the said Board for October 1, 1936, at 11:00 o'clock a.m. of the said date, in the offices of Byron Jackson Company at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of transacting such business as may come before the meeting, and we hereby waive all notice of such meeting and consent to the holding thereof.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said Corporation.

Witness our hand this first day of October, 1936.

(Sgd) C. L. PATTERSON,

(Sgd) E. S. DULIN,

(Sgd) J. C. BALLAGH,

Directors.

MINUTES OF SPECIAL MEETING
OF
BOARD OF DIRECTORS OF PATTERSON-
BALLAGH CORPORATION, LTD.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd., was held on the 1st day of October, 1936, at 11:00 o'clock a.m. in the offices of Byron Jackson Company, 2150 East

Plaintiff's Exhibit No. 1—(Continued)

Slauson Avenue, Los Angeles, California, there being present and acting at said meeting

J. C. Ballagh

E. S. Dulin

C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, and Mr. J. C. Ballagh acted as Secretary.

The minutes of the last meeting were read and approved on motion duly made, seconded and unanimously carried.

The Secretary then presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The President announced that the meeting was called for the purpose of ratifying the acts of the officers in declaring dividends as of August 1, 1936 and September 1, 1936.

Upon motion duly made, seconded and carried, the following Resolution was unanimously adopted:

Resolved: That the Board of Directors do and they hereby ratify the acts of the officers in declaring a dividend of two (2) per cent, declared as of August 1, 1936, and paid August 25, 1936, out of the profits of the corporation

Plaintiff's Exhibit No. 1—(Continued)
earned prior to August 1, 1936, as shown by the financial report of August 1, 1936.

Resolved Further: That the Board of Directors do and they hereby ratify the acts of the officers in declaring a dividend of two (2) per cent, declared as of September 1, 1936, and paid September 30, 1936, out of the profits of the corporation earned prior to September 1, 1936, as shown by the financial report of September 1, 1936.

Upon motion of Mr. Dulin, seconded by Mr. Patterson, and unanimously carried, the following Resolution was adopted:

Resolved: That the meetings of the Board of Directors be not held on less than three (3) days' notice in writing by mail to each director.

Upon motion of Mr. Patterson, seconded by Mr. Ballagh, the following Resolution was adopted:

Resolved: That the Board of Directors fix the salaries of C. L. Patterson, President, and J. C. Ballagh, Secretary-Treasurer, at \$1250.00 each per month effective as of August 1, 1936, and \$2,000.00 each per month effective as of September 1, 1936.

Mr. Patterson and Mr. Ballagh voted in the affirmative, and Mr. Dulin voted in the negative, on the foregoing Resolution.

Mr. Dulin stated that, in his opinion, the administrative costs were out of all proportion to the

Plaintiff's Exhibit No. 1—(Continued)
 volume of business transacted by Patterson-Ballagh Corporation, Ltd.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON,
 President.

(Sgd) J. C. BALLAGH,
 Secretary.

(Sgd) C. L. PATTERSON,

(Sgd) E. S. DULIN.

Mr. Patterson and Mr. Ballagh voted in the affirmative, and Mr. Dulin voted in the negative, on the foregoing Resolution.

Mr. Dulin stated that, in his opinion, the administrative costs were out of all proportion to the volume of business transacted by Patterson-Ballagh Corporation, Ltd.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON.

(Sgd) J. C. BALLAGH,
 Secretary.

(Sgd) C. L. PATTERSON,

(Sgd) J. C. BALLAGH,

(Sgd) E. S. DULIN,

Directors.

Plaintiff's Exhibit No. 1—(Continued)

CALL AND WAIVER OF NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION,
LTD.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors of said corporation, hereby give our written consent to the holding of a special meeting of the said Board for December 28, 1936, at 3:00 o'clock p.m. of the said date, in the offices of Byron Jackson Company at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of adopting a Resolution authorizing the borrowing of \$6700.00 from the Security-First National Bank of Los Angeles, to be covered by Trust Deed on real estate and buildings, and for the purpose of transacting such business as may come before the meeting, and we hereby waive all notice of such meeting and consent to the holding thereof.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said corporation.

Plaintiff's Exhibit No. 1—(Continued)

Witness our hand this twenty-eighth day of December, 1936.

(Sgd)	J. C. BALLAGH,
(Sgd)	C. L. PATTERSON,
(Sgd)	E. S. DULIN,
	Directors.

MINUTES OF SPECIAL MEETING
OF
BOARD OF DIRECTORS OF PATTERSON-
BALLAGH CORPORATION, LTD.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd. was held on the 28th day of December, 1936, at 3:00 o'clock p.m. in the offices of Byron Jackson Company, 2150 East Slauson Avenue, Los Angeles, California, there being present and acting at said meeting

J. C. Ballagh
E. S. Dulin
C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, and Mr. J. C. Ballagh acted as Secretary.

The minutes of the last meeting were read and approved on motion duly made, seconded and unanimously carried.

The Secretary then presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver

Plaintiff's Exhibit No. 1—(Continued)

of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The President announced that the meeting was called for the purpose of passing a Resolution authorizing the corporation to borrow \$6700.00 from the Security-First National Bank of Los Angeles, California.

Upon motion duly made, seconded and carried, the following Resolution was unanimously adopted:

Resolved: That Patterson-Ballagh Corporation, Ltd. borrow from the Security-First National Bank of Los Angeles, California, the sum of \$6700.00, to be covered by Trust Deed on the following described property:

Lots One (1), Two (2), the West 70 feet of Lot Three (3), all of Lots Twenty-four (24) and Twenty-five (25) of Tract Number Six (6), being a resubdivision of certain lots in E. B. Grandins Subdivision, in the County of Los Angeles, State of California, as per map recorded in Book 12, page 174 of Maps, in the office of the County Recorder of said County.

There being no further business to come before

Plaintiff's Exhibit No. 1—(Continued)
 the meeting, on motion duly made, seconded and
 carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON,
 President.

(Sgd) J. C. BALLAGH,
 Secretary.

(Sgd) C. L. PATTERSON,

(Sgd) J. C. BALLAGH,

(Sgd) E. S. DULIN,
 Directors.

(Document next bound in Minute Book is as
 follows:)

(Endorsed:) Triplicate
 Resolution to Borrow
 Money—To Give Security

Patterson-Ballagh Corporation, Ltd.

A Corporation

to

Security-First National
 Bank of Los Angeles

Dated December 23rd, 1936

Certified Copy of

Resolution to Borrow Money—To Give Security
 (Real Estate)

- (1) Resolved, that this corporation Patterson-Bal-
 lagh Corporation, Ltd., will borrow from the
 Security-First National Bank of Los Angeles,
 the sum of Sixty-Seven Hundred Dollars;
- (2) Whereas, this corporation Patterson-Ballagh
 Corporation, Ltd. (initials in ink:) JCB has

Plaintiff's Exhibit No. 1—(Continued)

duly and regularly borrowed from the Security-First National Bank of Los Angeles, the sum of Eight Hundred.....Dollars;

To evidence said debt this corporation will execute its promissory note in favor of said bank under date of December 23rd, 1936, for the term of 5 years, payable in installments, with interest at 6 per cent per annum, payable monthly; Monthly installments of \$75.00 each, including interest commencing January 23, 1937, balance due Dec. 23, 1941, and to secure the payment thereof, and of any renewals or extensions thereof, will execute its mortgage or trust deed affecting the following described property:

Lots One (1), Two (2), the West 70 feet of Lot Three (3), all of Lots Twenty-four (24) and Twenty-five (25) of Tract Number Six (6), being a resubdivision of certain lots in E. B. Grandins Subdivision, in the County of Los Angeles, State of California, as per map recorded in Book 12, Page 174 of Maps in the office of the County Recorder of said County.

and will include in said mortgage or trust deed, or will now and/or will from time to time execute as separate instruments, assignments of such leases, mortgages on such personal property, and/or pledges of such other security therefor as said bank shall require; said (e.—note and) mortgage, trust deed, assignments of leases, chattel mortgages or pledge agreements to be in the form used or ap-

Plaintiff's Exhibit No. 1—(Continued)

proved by and upon such terms as may be arranged for with said bank, including conditions as to default, suit and attorneys' fees, management of property and distribution of income.

Resolved further that C. L. Patterson, the President, and J. C. Ballagh, the Secretary, of this corporation, be, and they are hereby authorized, empowered, and directed to make, execute and deliver the instruments hereinbefore mentioned, and such other instruments in connection therewith as may be agreed upon between them and said bank, in the name of and as the act and deed of this corporation, and is hereby appointed and authorized as the agent of this corporation to execute on its behalf the affidavit of good faith required on any chattel mortgage executed by this corporation as mortgagor.

I, J. C. Ballagh, Secretary of the Patterson-Ballagh Corporation, Ltd., hereby certify that the foregoing is a true copy of a resolution duly and legally adopted by the Board of Directors of said corporation, at a legal meeting of said Board duly and regularly held on the 28th day of December, A.D., 1936, and that said resolution has not been revoked.

Plaintiff's Exhibit No. 1—(Continued)

Witness our hands this 29th day of January,
1937.

(Sgd) C. L. PATTERSON,
C. L. Patterson.

(Sgd) J. C. BALLAGH,
J. C. Ballagh.

(Sgd) E. S. DULIN,
Byron Jackson Co.,
(A corporation by E. S.
Dulin, President.)

(Sgd) J. C. BALLAGH,
Highland Investment Corp,
Ltd.

(By J. C. Ballagh, Presi-
dent.)

(Sgd) E. S. DULIN,
E. S. Dulin.
Stockholders.

MINUTES OF ANNUAL MEETING OF
STOCKHOLDERS OF PATTERSON-
BALLAGH CORPORATION, LTD.

The annual meeting of the stockholders of Pat-
terson-Ballagh Corporation, Ltd., was held in the
offices of Byron Jackson Company, 2150 East Slau-
son Avenue, Los Angeles, California, on January
29, 1937, at 11:00 o'clock a. m.

Plaintiff's Exhibit No. 1—(Continued)

The meeting was called to order by President C. L. Patterson, who acted as Chairman of the meeting, and Mr. J. C. Ballagh acted as Secretary.

Secretary J. C. Ballagh presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the stockholders, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The Secretary thereupon called the roll of stockholders and the following report was made of stockholders and stock representatives at the meeting:

Name	No. of Shares
Ballagh, J. C.....	125
Byron Jackson Company, (a corporation, by E. S. Dulin, President).....	249
Dulin, E. S.....	1
Highland Investment Corp, Ltd., by J. C. Ballagh, President.....	250
Patterson, C. L.....	375
<hr/>	
Total Capital Stock.....	1,000

The Secretary reported that the above number of shares represented all of the issued and outstanding stock as of said date.

The financial report of the corporation for the

Plaintiff's Exhibit No. 1—(Continued)

period ending December 31, 1936, as prepared under the direction of the Secretary-Treasurer, was presented and unanimously approved and a summary of same was ordered attached hereto and made a part of the minutes of this meeting.

Upon motion duly made, seconded and carried, the following Resolution was unanimously adopted:

Be It Resolved, that each and every act of the directors of this corporation, and of each of the officers of this corporation, as shown by the records of this corporation, with the exception of the officers' salaries, and also with the exception of any acts of the officers expressly disapproved by the Board of Directors of this corporation, be and the same are hereby ratified, adopted, approved and confirmed, as and for the acts of this corporation.

Upon motion duly made and seconded the following Resolution was adopted:

Be It Resolved, that the salaries prevailing for the past year of the two executive officers are hereby approved.

Mr. Patterson and Mr. Ballagh voted in the affirmative, and Mr. Dulin voted in the negative, on the foregoing resolution.

Mr. Dulin stated that, in his opinion, from the preliminary financial statement rendered the company's financial condition has not allowed the administrative salaries being paid which, in his opinion, are excessive, and further, the dividends de-

Plaintiff's Exhibit No. 1—(Continued)

clared during the year should not have been paid. Taking into consideration the condition of the business, the volume of sales, as a director and a stockholder, he urged that the administrative salaries be adjusted downward and that no further dividends be paid until the company is in a greatly improved financial position.

The Chairman announced that the next business before the meeting was the election of a Board of Directors for the ensuing year. Thereupon, the following were duly nominated as directors to serve until the next annual election and until the election and qualification of their respective successors:

Ballagh, J. C.

Dulin, E. S.

Patterson, C. L.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON,

Chairman.

(Sgd) J. C. BALLAGH,

Secretary.

Plaintiff's Exhibit No. 1—(Continued)

Secretary's Report of 1936 Operations

INCOME and PROFIT and LOSS

Gross Sales	\$191,546.95	
Cost of Goods Sold	46,342.91	
		145,204.04
Operating Expenses	125,123.26	
		20,080.78
Net Operating Profit		20,080.78
Other Expenses—Less Other Income.....		4,231.54
		15,849.24
Net Gain for period		15,849.24

Summary of Surplus

Balance as per Ledger 12/31/35	\$ 75,044.16	
1936 Credits:		
Adjustment of Depreciation as per Federal Tax Investigation on 1934- 1935 Returns	5,625.65	
Net Profit from Operations.....	15,849.24	21,474.89
		\$ 96,519.05
1936 Charges:		
Capital Stock Tax 1935.....	350.00	
Federal Income Tax and Excess Profit Tax	842.78	
Dividends Declared 2/25/36 2,000.00		
“ “ 8/ 1/36 2,000.00		
“ “ 9/ 1/36 2,000.00		
	6,000.00	7,192.78
Surplus Balance 12/31/36	\$ 89,326.27	

I, J. C. Ballagh, as Secretary-Treasurer of Patterson-Ballagh Corporation, Ltd., hereby certify that the foregoing report is true, to the best of my knowledge and belief.

(Sgd) J. C. BALLAGH
J. C. Ballagh

Plaintiff's Exhibit No. 1—(Continued)

CALL AND WAIVER OF NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS OF PATTERSON-
BALLAGH CORPORATION, LTD.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors of said corporation, hereby give our written consent to the holding of a special meeting of the said Board for January 29, 1937, at 11:00 o'clock a. m. of said date, in the offices of Byron Jackson Company, at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of discussing such matters as may come before the meeting.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said corporation.

Witness our hands this 29th day of January, 1937.

(Sgd) C. L. PATTERSON,
C. L. Patterson.

(Sgd) J. C. BALLAGH,
J. C. Ballagh.

(Sgd) E. S. DULIN,
E. S. Dulin.
Directors.

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF ANNUAL MEETING OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

The annual meeting of directors of Patterson-Ballagh Corporation, Ltd., was held in the offices of Byron Jackson Company, 2150 East Slauson Avenue, Los Angeles, California, on January 29, 1937, immediately following the annual meeting of the stockholders.

There were present and acting at said meeting:

J. C. Ballagh

E. S. Dulin

C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. E. S. Dulin, who acted as Chairman of the meeting, and Mr. J. C. Ballagh acted as Secretary.

Secretary J. C. Ballagh presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The Chairman stated that the first business to come before the meeting was the election of officers for the ensuing year, and the following persons were nominated for the respective offices, to-wit:

Plaintiff's Exhibit No. 1—(Continued)

C. L. Patterson, President

J. C. Ballagh, Secretary-Treasurer

There being no further nominations, and the nominations of the above named persons being duly seconded, a vote was had and the Secretary declared the said persons unanimously nominated for the said respective offices for the ensuing year.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) E. S. DULIN,

E. S. Dulin, Chairman.

(Sgd) J. C. BALLAGH,

J. C. Ballagh.

(Sgd) J. C. BALLAGH,

J. C. Ballagh.

(Sgd) E. S. DULIN,

E. S. Dulin.

(Sgd) C. L. PATTERSON,

C. L. Patterson.

Directors.

CALL AND WAIVER OF NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors of said corporation, hereby give our written con-

Plaintiff's Exhibit No. 1—(Continued)
 sent to the holding of a special meeting of the said Board for March 31, 1937, at 11 o'clock a. m. of the said date, in the offices of Byron Jackson Company at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of transacting such business as may come before the meeting, and we hereby waive all notice of such meeting and consent to the holding thereof.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said Corporation.

Witness our hand this 31st day of March, 1937.

(Sgd) J. C. BALLAGH,
 J. C. Ballagh.

(Sgd) E. S. DULIN,
 E. S. Dulin,

(Sgd) C. L. PATTERSON,
 C. L. Patterson.

MINUTES OF SPECIAL MEETING
 OF
 BOARD OF DIRECTORS OF
 PATTERSON-BALLAGH CORPORATION, Ltd.

A special meeting of the Board of Directors of

Plaintiff's Exhibit No. 1—(Continued)

Patterson-Ballagh Corporation, Ltd., was held on the 31st day of March, 1937, at 11:00 o'clock a. m. in the offices of Byron Jackson Company, 2150 East Slauson Avenue, Los Angeles, California, there being present and acting at said meeting

J. C. Ballagh

E. S. Dulin

C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, who acted as Chairman.

The minutes of the last meeting were read and approved on motion duly made, seconded and unanimously carried.

The Secretary then presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The Secretary announced that the meeting was called for the purpose of passing on the advisability of establishing a line of credit with the Security-First National Bank of Los Angeles, in the amount of \$15,000.00, by pledging the Accounts Receivable of the Corporation.

After a general discussion of the subject, and in view of Director Dulin's opinion in the matter, the Resolution as offered was withdrawn without having been voted upon.

Plaintiff's Exhibit No. 1—(Continued)

The next matter to come up for discussion was the establishment of a group, composed of a committee of five, to assist in the operation of Patterson-Ballagh Corporation's affairs, substantially as outlined in the attached memorandum, which was confirmed by the Board.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON,
C. L. Patterson, Chairman.

(Sgd) J. C. BALLAGH,
J. C. Ballagh, Secretary.

(Sgd) C. L. PATTERSON,

(Sgd) J. C. BALLAGH,

(Sgd) E. S. DULIN,
Directors.

MEMORANDUM OF AGREEMENT

between

J C BALLAGH and C L PATTERSON

An agreement has been reached as to the conduct of Patterson-Ballagh Corporation in matters other than those normally carried before the Board.

1. A committee of 5 to act on all matters concerning the operation of the business, consisting of the following:

Plaintiff's Exhibit No. 1—(Continued)

J C Ballagh

C L Patterson

W W Cahoon (Office)

R A McWaid (Factory)

P A Medearis (Sales)

2. Meetings to be held each and every Monday at 11:00 o'clock a. m.; any member of the group unable to attend is to appoint a substitute who is to act for him. Meeting called to order by a temporary Chairman (J. C. Ballagh, if present) with a secretary to take notes of the meeting. At first meeting a permanent Chairman to be voted on and after the first meeting the notes of the previous meeting to be read. All matters brought before the group to be read into the records, which are to be available to all members, with copies of the minutes of the various meetings to be sent to each Director.

Matters to be presented on motion and to be seconded and voted on under regular rule of order. After vote the majority rule to be agreed upon without further argument or hard feelings. In the event of a deadlock or refusal of a member to accede to the majority rule the matter to be brought before the Board of Patterson-Ballagh Corporation and the decision of the Board to be final.

3. The matters to be brought before the group are those of current problems and reports of the actions of members that were given specific instructions in the previous meetings; also, any report of emergency action that has been take since the last meeting.

4. Any action as passed and approved by the

Plaintiff's Exhibit No. 1—(Continued)

group is considered normal and acts as a basis for future operations when the same action arises between meetings.

5. Any emergency action taken by members of the group between meetings to be according to best judgment and to be accepted by the group as being for the best interest of the corporation; no member to be censored for making a decision that is considered wrong by the group. The group, however, has the right to pass a resolution correcting the matter insofar as possible.

March 25, 1937.

MINUTES OF SPECIAL MEETING
OF
BOARD OF DIRECTORS OF PATTERSON-
BALLAGH CORPORATION, Ltd.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd. was held on the 17th day of May, 1937, at 11:00 o'clock a. m. in the offices of the corporation at 1900 East 65th Street, Los Angeles, California, pursuant to notice issued.

There were present and acting at said meeting

J. C. Ballagh

C. L. Patterson

Director E. S. Dulin was absent.

The meeting was called to order by Mr. J. C. Ballagh who acted as Chairman.

The minutes of the last meeting were read and

Plaintiff's Exhibit No. 1—(Continued)

approved on motion duly made, seconded and unani-
mously carried.

The Chairman announced that the first thing to come before the meeting was the matter of securing a permit for the corporation to do business in the states of Louisiana and Texas, and upon motion duly made and seconded it was unanimously

Resolved, That Patterson-Ballagh Corporation, Ltd. make application for permit to do business in the State of Louisiana;

Resolved Further, That Fred. Bennett, Box 23, Oil City, Louisiana, be appointed Resident Agent.

Resolved, That Patterson-Ballagh Corporation, Ltd. make application for permit to do business in the State of Texas;

Resolved Further, That J. M. O'Melveny, 2127 Bartlett Street, Houston, Texas, be appointed Resident Agent.

Resolved, That any papers or affidavits made out in connection with securing the permits, referred to in the foregoing resolutions, be submitted to Mr. F. Ewing for approval before being filed.

The Chairman then stated that the next thing to come before the Board was the approval of a recommended change in the selling method in the Mid-Continent, whereby we would sell through approved dealers only, together with a change in the discount allowed, and the elimination of the 2 per cent cash discount previously allowed to the entire trade.

Plaintiff's Exhibit No. 1—(Continued)

Upon motion duly made and seconded, it was unanimously

Resolved, That a letter be sent to all supply stores through which we have sold in the past, withdrawing all discounts effective June 1st;

Resolved Further, That we send a letter to an approved list of dealers notifying them of their re-instatement and advising that effective June 1st the new discount will be 10 per cent for non-stocking jobbers, and 15 per cent for those stocking our merchandise;

Resolved Further, That the entire trade be notified of the withdrawal of the 2 per cent cash discount previously allowed.

The next matter that came up for discussion was the proposed establishment of a bonus for Mr. J. M. O'Melveny and the Mid-Continent employes; also a salary increase for Mr. O'Melveny. Upon motion duly made and seconded, it was unanimously

Resolved, That a fair and adequate bonus system be established within the next month that will pay a percentage over the salary now being made to Mr. J. M. O'Melveny and the men under him;

Resolved Further, That Mr. O'Melveny be granted a salary increase of \$50.00 per month.

There being no further business to come before

Plaintiff's Exhibit No. 1—(Continued)

the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON
President

(Sgd) J. C. BALLAGH
Secretary

(Sgd) J. C. BALLAGH
J. C. Ballagh

(Sgd) C. L. PATTERSON
C. L. Patterson

CALL AND WAIVER OF NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors of said corporation, hereby give our written consent to the holding of a special meeting of the said Board for October 27, 1937, at 11 o'clock a. m. of the said date, in the offices of Byron Jackson Company at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of transacting such business as may come before the meeting, and we hereby waive all notice of such meeting and consent to the holding thereof.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though

Plaintiff's Exhibit No. 1—(Continued)

said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said corporation.

Witness our hand this twenty-seventh day of October, 1937.

(Sgd)	C. L. PATTERSON
(Sgd)	J. C. BALLAGH
(Sgd)	E. S. DULIN
	Directors

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS OF PATTERSON-
BALLAGH CORPORATION, Ltd.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd. was held on the 27th day of October, 1937, at 11:00 o'clock a. m., in the offices of Byron Jackson Co., at 1250 East Slauson Avenue, Los Angeles, California, there being present and acting at said meeting

J. C. Ballagh
E. S. Dulin
C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, who acted as Chairman.

The minutes of the last meeting were read and approved on motion duly made, seconded and unani-
mously carried.

Plaintiff's Exhibit No. 1—(Continued)

The Secretary then presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

A discussion was had relative to the form in which the financial reports were prepared, and it was suggested by Mr. Dulin that the report show a surplus carried ahead month by month. It was decided by the Board to carry on with the present system of auditing until the first of the year and possibly at that time consider a good man in the organization in the place of an outside auditor.

It was unanimously agreed that the matter of payment of bonuses to employees would be discussed at a meeting to be called during the first part of December.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON

Chairman

(Sgd) J. C. BALLAGH

Secretary

(Sgd) C. L. PATTERSON

(Sgd) J. C. BALLAGH

(Sgd) E. S. DULIN

Directors

Plaintiff's Exhibit No. 1—(Continued)

CALL AND WAIVER OF NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors of said corporation, hereby give our written consent to the holding of a special meeting of the said Board for November 2, 1937 at 11:00 o'clock a. m. of the said date, in the offices of Byron Jackson Co., at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of transacting such business as may come before the meeting, and we hereby waive all notice of such meeting and consent to the holding thereof.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said Corporation.

Plaintiff's Exhibit No. 1—(Continued)

Witness our hand this second day of November,
1937.

(Sgd) J. C. BALLAGH
 J. C. Ballagh
(Sgd) E. S. DULIN
 E. S. Dulin
(Sgd) C. L. PATTERSON
 C. L. Patterson
 Directors

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd. was held on the 2nd day of November, 1937, at 11:00 o'clock a. m., in the offices of Byron Jackson Co., at 2150 East Slauson Avenue, Los Angeles, California, there being present and acting at said meeting

J. C. Ballagh
E. S. Dulin
C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, who acted as Chairman.

The minutes of the last meeting were read and approved on motion duly made, seconded and unani-
mously carried.

The Secretary then presented to the meeting the original waiver of notice and consent to the meet-

Plaintiff's Exhibit No. 1—(Continued)

ing, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

There was a general discussion regarding sales policy in California, and consideration of the bonus, and it was agreed to hold both subjects in abeyance until a later meeting.

In regard to the sales policy in California, it was suggested by Mr. Dulin that the matter of contacting the trade in California be discussed with Medearis to see if the matter could not be handled in a manner more satisfactory to Patterson and Ballagh.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON
 C. L. Patterson
 Chairman

(Sgd) J. C. BALLAGH
 J. C. Ballagh
 Secretary

(Sgd) C. L. PATTERSON

(Sgd) J. C. BALLAGH

(Sgd) E. S. DULIN

Directors

Plaintiff's Exhibit No. 1—(Continued)

CALL AND WAIVER OF NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors of said corporation, hereby give our written consent to the holding of a special meeting of the said Board for December 16, 1937, at 10:30 o'clock a. m. of the said date, in the offices of Byron Jackson Co., at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of transacting such business as may come before the meeting, and we hereby waive all notice of such meeting and consent to the holding thereof.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said corporation.

Plaintiff's Exhibit No. 1—(Continued)

Witness our hand this sixteenth day of December, 1937.

(Sgd)	J. C. BALLAGH J. C. Ballagh
(Sgd)	E. S. DULIN E. S. Dulin
(Sgd)	C. L. PATTERSON C. L. Patterson Directors

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd. was held on the 16th day of December, 1937, at 10:30 o'clock a. m. in the offices of Byron Jackson Co., at 1250 East Slanson Avenue, Los Angeles, California, there being present and acting at said meeting

J. C. Ballagh
E. S. Dulin
C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson who acted as Chairman.

The minutes of the last meeting were read and approved on motion duly made, seconded and unanimously carried.

Plaintiff's Exhibit No. 1—(Continued)

The Secretary then presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

A discussion was had regarding the various tax plans and methods of computation, based on the estimated earnings of the corporation for the year 1937.

No action was taken in regard to the payment of dividends and it was suggested by Mr. Dulin that this matter be held in abeyance until a meeting to be held in February, 1938.

The subject of the payment of bonuses to employees was discussed at length and upon motion duly made and seconded, it was unanimously

Resolved, That a bonus in a sum not to exceed \$2,000.00 be paid the employes of Patterson-Ballagh Corporation in accordance with a plan to be worked out and approved by the officers of the corporation.

The matter of licensing the Bettis Rubber Company under the expander patent owned by Patterson-Ballagh Corporation was discussed at length and upon motion duly made and seconded, it was unanimously

Resolved, That Patterson-Ballagh Corporation enter into a license agreement with Bettis

Plaintiff's Exhibit No. 1—(Continued)

to the holding of a special meeting of the said stockholders for March 11, 1938, at 8:00 o'clock a.m. of the said date, in the offices of Byron Jackson Co., at 2150 East Saulson Avenue, Los Angeles, California, for the purpose of discussing such matters as may come before the meeting.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the stockholders of said corporation.

Witness our hands this 11th day of March, 1938.

(Sgd) C. L. PATTERSON

C. L. Patterson

(Sgd) J. C. BALLAGH

J. C. Ballagh

(Sgd) E. S. DULIN

BYRON JACKSON CO.

(A corporation by E. S. Dulin,
President)

(Sgd) J. C. BALLAGH

Highland Investment Corp.,
Ltd.

(By J. C. Ballagh, President)

(Sgd) E. S. DULIN

E. S. Dulin

Stockholders

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF ANNUAL MEETING OF
STOCKHOLDERS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

The annual meeting of the stockholders of Patterson-Ballagh Corporation, Ltd. was held in the offices of Byron Jackson Co., 2150 East Slauson Avenue, Los Angeles, California, on March 11, 1938, at 8:00 o'clock a.m.

The meeting was called to order by President C. L. Patterson, who acted as Chairman of the meeting, and Mr. J. C. Ballagh acted as Secretary.

Secretary J. C. Ballagh presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the stockholders, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The Secretary thereupon called the roll of stockholders and the following report was made of stockholders and stock representatives at the meeting:

Name	No. of shares
Ballagh, J. C.	125
Byron Jackson Co., (a corporation)	
by E. S. Dulin, Pres.	249
Dulin, E. S.	1
Highland Investment Corp., Ltd.	
by J. C. Ballagh, Pres.	250
Patterson, C. L.	375
	<hr/>
Total Capital Stock	1,000

Plaintiff's Exhibit No. 1—(Continued)

Secretary's Report of 1937 Operations

INCOME and PROFIT and LOSS

Gross Sales	\$251,049.01
Cost of Goods Sold	68,475.78
	<hr/>
	182,573.23
Operating Expenses	157,645.25
	<hr/>
Net Operating Profit	24,927.98
Other Expenses—Less Other Income.....	5,776.01
	<hr/>
Net Gain for period, before Income Tax Deduction....	19,151.97
Income Tax—1937	4,956.50
	<hr/>
Net Gain	14,195.47

Summary of Surplus

Balance as per Ledger 12/31/36	89,326.27
1937 Credits:	
Net Profit from Operations	19,151.97
	<hr/>
	108,478.24
1937 Charges:	
Federal Income & Excess Profit Tax	
1936	2,618.03
Correction on Capital Stock Tax.....	10.00
Adjustment of Installation Equip- ment	124.34
Adjustment of Reserve for Depre- ciation (Installation Equipment)	135.41
Federal Income & Excess Profit Tax	
1937	4,956.50
	<hr/>
	7,844.28
Total Earned Surplus	100,633.96
Appreciated Surplus	1,611.86
	<hr/>
Total Surplus	\$102,245.82

I, J. C. Ballagh, as Secretary-Treasurer of Patterson-Ballagh Corporation, Ltd., hereby certify that the foregoing report is true, to the best of my knowledge and belief.

(Sgd) J. C. BALLAGH

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF ANNUAL MEETING OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

The annual meeting of directors of Patterson-Ballagh Corporation, Ltd. was held in the offices of Byron Jackson Co., 2150 East Slauson Avenue, Los Angeles, California, on March 11, 1938, immediately following the annual meeting of the stockholders.

There were present and acting at said meeting

J. C. Ballagh

E. S. Dulin

C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, who acted as Chairman of the meeting, and Mr. J. C. Ballagh acted as Secretary.

Secretary J. C. Ballagh presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the stockholders, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The Chairman stated that the first business to come before the meeting was the election of officers for the ensuing year, and the following persons were nominated for the ensuing year for the respective offices, to-wit:

C. L. Patterson—President

J. C. Ballagh—Secretary-Treasurer

Plaintiff's Exhibit No. 1—(Continued)

C. J. Ballagh

E. S. Dulin

C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, who acted as Chairman of the meeting, and Mr. J. C. Ballagh acted as Secretary.

Secretary J. C. Ballagh presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

There was a general discussion relative to the financial statements during which it was brought out that these statements did not show the gain before tax, with an estimate of what the taxes would be, and the net after the tax. It was suggested by Mr. Dulin that these reports when issued show the gain in the manner outlined above and that this same information be shown on the auditor's report.

The matter of patent infringement was discussed, and upon motion duly made, seconded and carried, it was unanimously

Resolved, That Patterson-Ballagh Corporation, Ltd. proceed with the suit against the Rubber Sleeve Specialty Company for alleged infringement in Arkansas, the suit to be filed

Plaintiff's Exhibit No. 1—(Continued)

subject to approval of Leonard Lyon and carried forward in a manner subject to his approval.

The next matter for discussion was the recommendation of Mr. W. W. Cahoon for salary increases for the various employees in the Accounting Department. After a general discussion it was unanimously decided that the increases as recommended be not made at this time and the suggestion made that the matter be brought before the Board again within the next month or two.

A letter from Mr. J. M. O'Melveny, Mid-Continent Sales Manager, was presented to the Board by the Secretary, recommending a blanket increase in salary of ten dollars per month for the various sales and field men in the Mid-Continent.

After a general discussion as to business prospects, both in the oil industry and business in general, it was moved by Mr. Dulin and seconded by Mr. Patterson that no blanket increases in salaries be made at this time. Mr. Ballagh made a motion to the contrary, stating that, in his opinion, Mr. O'Melveny was in a better position to make recommendations along this line and, therefore, believed that Mr. O'Melveny's recommendation should be accepted.

It was unanimously agreed that Mr. Ballagh should write Mr. O'Melveny, explaining the stand taken by the Board in regard to blanket increases, and obtain from him a recommendation to spot increases in salaries of the men to bring the salaries

Plaintiff's Exhibit No. 1—(Continued)

up to levels comparable with those paid by other oil tool companies.

The matter of appointing a new resident agent in Louisiana was discussed and upon motion duly made and seconded, it was unanimously.

Resolved, That Mr. R. C. Medearis of New Iberia, Louisiana, be appointed Resident Agent in Louisiana to succeed Mr. Fred. Bennett.

The matter of licensing the Bettis Rubber Company under the expander patent, owned by Patterson-Ballagh Corporation, came up for further discussion and upon motion duly made and seconded it was unanimously

Resolved, That the Resolution adopted at the meeting held December 16, 1937, authorizing a license agreement with Bettis Rubber Company, be herewith nullified.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON
Chariman

(Sgd) J. C. BALLAGH
Secretary

(Sgd) C. L. PATTERSON

(Sgd) E. S. DULIN

(Sgd) J. C. BALLAGH
Directors

Plaintiff's Exhibit No. 1—(Continued)

CALL AND WAIVER OF NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors of said corporation, hereby give our written consent to the holding of a special meeting of the said board for March 24, 1938, at 11:00 o'clock a.m. of said date, in the offices of Byron Jackson Co., at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of discussing such matters as may come before the meeting.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said corporation.

Witness our hands this 24th day of March, 1938.

(Sgd) C. L. PATTERSON

C. L. Patterson

(Sgd) J. C. BALLAGH

J. C. Ballagh

E. S. Dulin

Directors

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF SPECIAL MEETING
OF BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd. was held on the 24th day of March, 1938, at 11:00 o'clock a.m. in the offices of Byron Jackson Co., at 1250 East Slauson Avenue, Los Angeles, California, there being present and acting at said meeting

J. C. Ballagh

E. S. Dulin

C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, who acted as Chairman of the meeting, and Mr. J. C. Ballagh acted as Secretary.

Secretary J. C. Ballagh presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The Secretary reported that a letter had been received from Mr. O'Melveny, in answer to the letter written him advising the stand taken by the Board in regard to blanket increases in salaries, recommending increases for three of the men in the Mid-Continent, and upon motion duly made and seconded it was unanimously

Plaintiff's Exhibit No. 1—(Continued)

Resolved, That the salaries of R. C. Medearis, W. B. Gardner and Ray Morris be increased Ten Dollars per month, effective March 15, 1938.

The matter of increases in salaries for employees in the Accounting Department, as recommended by Mr. W. W. Cahoon at the previous meeting, came up for further discussion, and it was moved, seconded and unanimously

Resolved, that the salaries of W. S. Sharp, Fred. Bollinger and C. Carpenter be increased as follows, effective March 15, 1938:

Sharp	-----	\$8.00	per month
Bollinger	-----	7.50	“ “
Carpenter	-----	5.00	“ “

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON
 Chairman

(Sgd) J. C. BALLAGH
 Secretary

(Sgd) C. L. PATTERSON

(Sgd) E. S. DULIN

(Sgd) J. C. BALLAGH
 Directors

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd. was held on the 29th day of April, 1938, at 10:00 o'clock a.m. in the offices of the corporation at 1900 East 65th Street, Los Angeles, California, pursuant to notice issued.

There were present and acting at said meeting

J. C. Ballagh

C. L. Patterson

Director E. S. Dulin was absent.

The meeting was called to order by Mr. C. L. Patterson who acted as Chairman.

The minutes of the last meeting were read and approved on motion duly made, seconded and unanimously carried.

The Chairman announced that the first thing to come before the meeting was the matter of transferring the bank account carried with the South Texas Commercial National Bank in Houston, Texas, from the name of J. M. O'Melveny to Patterson-Ballagh Corporation, Ltd.

Upon motion duly made and seconded it was unanimously

Resolved, That the account with the South Texas Commercial National Bank in Houston, Texas, formerly carried in the name of J. M. O'Melveny be transferred to Patterson-Ballagh

Plaintiff's Exhibit No. 1—(Continued)

Corporation, Ltd., and that checks against this account be signed by J. M. O'Melveny as District Manager;

Resolved Further, That arrangements be made with the bank so that funds may be withdrawn from this account on the signature of C. L. Patterson, J. C. Ballagh or J. M. O'Melveny.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON

President.

(Sgd) J. C. BALLAGH

Secretary

(Sgd) J. C. BALLAGH

J. C. Ballagh

(Sgd) C. L. PATTERSON

C. L. Patterson

Directors

CALL AND WAIVER OF NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

We, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, Ltd., desiring to hold a special meeting of the Board of Directors

Plaintiff's Exhibit No. 1—(Continued)

of said corporation, hereby give our written consent to the holding of a special meeting of the said board for June 20, 1938, at 3:00 o'clock p.m. of said date, in the offices of Byron Jackson Co., at 2150 East Slauson Avenue, Los Angeles, California, for the purpose of discussing such matters as may come before the meeting.

And we do further agree that any and all business transacted at said meeting shall be as valid and legal and of the same force and effect as though said meeting were held after notice otherwise duly given, served and published, and we hereby waive notice and publication of notice of the time and place of such meeting of the Board of Directors of said corporation.

Witness our hands this 20th day of June, 1938.

(Sgd) C. L. PATTERSON

C. L. Patterson

(Sgd) J. C. BALLAGH

(Sgd) E. S. DULIN

E. S. Dulin

Directors

MINUTES OF SPECIAL MEETING OF
BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

A special meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd. was held on

Plaintiff's Exhibit No. 1—(Continued)

the 20th day of June, 1938, at 3:00 o'clock p.m. in the offices of Byron Jackson Co., at 1250 East Slauson Avenue, Los Angeles, California, there being present and acting at said meeting

J. C. Ballagh

E. S. Dulin

C. L. Patterson

being all of the directors of said corporation.

The meeting was called to order by Mr. C. L. Patterson, who acted as Chairman of the meeting, and Mr. J. C. Ballagh acted as Secretary.

Secretary J. C. Ballagh presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The Secretary presented to the Board a letter received from Mr. J. M. O'Melveny, of Houston, Texas, requesting an increase in salary and a bonus, together with a recommendation for an increase in salary for Mr. T. M. Smith, Jr.

After a general discussion, and upon motion duly made and seconded it was unanimously

Resolved, That the salary of Mr. J. M. O'Melveny be increased from \$354.00 to \$375.00, effective July 1, 1938;

Resolved Further, That Mr. O'Melveny be

Plaintiff's Exhibit No. 1—(Continued)

given a bonus of \$25.00 when sales in the Mid-Continent area (comprising the states of Texas, Louisiana, Oklahoma, Arkansas, New Mexico and Illinois) exceed \$15,000.00 in any one month; \$50.00 when the sales exceed \$18,000.00 and \$75.00 when the sales exceed \$21,000.00. This will in no way affect any yearly bonus which may be paid by the corporation;

Resolved Further, That the salary of Mr. T. M. Smith, Jr. be increased from \$160.00 to \$170.00 per month, effective July 1, 1938;

Resolved Further, That a dividend of six (6) per cent of the capital stock be paid out of the profits of the corporation, earned prior to June 30, 1938, to the stockholders on record as of June 30, 1938.

There being no further business to come before the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

(Sgd) C. L. PATTERSON
Chairman

(Sgd) J. C. BALLAGH
Secretary

(Sgd) C. L. PATTERSON

(Sgd) J. C. BALLAGH
Directors

Plaintiff's Exhibit No. 1—(Continued)
WRITTEN ASSENT OF SHAREHOLDERS
TO AMENDMENT OF BY-LAWS OF
PATTERSON-BALLAGH CORPORATION, Ltd.

Know All Men by These Presents:

That we, the undersigned, being the holders of subscribed shares entitled to exercise a majority of the voting power of Patterson-Ballagh Corporation, a California corporation, and each holding the number of such shares hereinbelow indicated after the name of each, do hereby assent to the adoption of, and amendments to, the By-Laws of said corporation as follows:

Section 1, Article I.

“The annual meetings of the stockholders shall be held on the first Tuesday following the 10th of January in each year, at 8:30 o'clock A.M.*

Section 1, Article II. Powers

“Subject to limitations of the articles of incorporation, of the by-laws, and of title one of part four of division first of the California Civil Code as to action to be authorized or approved by the shareholders, and subject to the duties of directors as prescribed by the by-laws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation shall be controlled by, the board of directors.*

Plaintiff's Exhibit No. 1—(Continued)

Section 2, Article II Number and Qualification.

“The authorized number of directors of the corporation shall be five until changed by amendment of the articles of incorporation or by a by-law amending this Section 2 of Article II of these by-laws duly adopted by the vote or written assents of the shareholders entitled to exercise a majority of the voting power of the corporation.”

Section 5, Article II Place of Business.

“The principal place of business and office of the corporation shall be 1900 East 65th Street, Los Angeles, California, until the Board of Directors shall otherwise provide.”

Section 6, Article II. Meetings.

“Regular meetings of the Board of Directors shall be held at the principal place of business, or office of the corporation, on the first Tuesday following the 10th of each month at 8:30 o'clock A.M. It shall not be necessary to give notice of any of such meetings nor of the business to be transacted. Special meetings of said Board may be called upon the order of the President, or any two directors; and the Secretary shall give three days' notice in writing, by mail, of the meeting to each director; provided, that a meeting may be held at any time without notice if all the directors are present or consent thereto in writing or by telegram; and a meeting of the directors may be held

Plaintiff's Exhibit No. 1—(Continued)
without notice immediately after the annual meeting; provided, further, that the first regular meeting of said Board for the transaction of any and all business shall be held at the said office of the corporation immediately after the adoption of these By-Laws."

Article VIII. Amendments.

"Section 1. Power of Shareholders. New By-Laws may be adopted or these by-laws may be amended or repealed by the vote of shareholders entitled to exercise a majority of the voting power of the corporation or by the written assent of such shareholders.

Section 2. Power of Directors. Subject to the right of shareholders as provided in Section 1 of this Article VIII to adopt, amend or repeal by-laws, by-laws other than a by-law or amendment thereof changing the authorized number of directors may be adopted, amended or repealed by the board of directors".

and we hereby adopt the same as and for By-Laws of said corporation.

In Witness Whereof we have hereunto subscribed our names this 4th day of August, 1938.

Name	No. of Shares
Highland Investment Corp.	375

By (Sgd) J. C. Ballagh	
(Sgd) C. L. Patterson	375
-----	-----

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF MEETING OF BOARD OF
DIRECTORS OF PATTERSON-BALLAGH
CORPORATION, LTD.

A meeting of the Board of Directors of Patterson-Ballagh Corporation, Ltd., was held August 6, 1938, at the hour of 11:00 o'clock, A. M., at the office of the Company, 1900 East 65th Street, Los Angeles, California, pursuant to notice regularly served on each Director as provided in the By-Laws.

Those present were:

J. C. Ballagh,

C. L. Patterson,

E. S. Dulin,

constituting all of the members of the Board.

The President called the meeting to order and stated that the first order of business was the reading of the minutes of the previous meeting of the Board.

Upon motion duly made, seconded and carried the reading of the minutes of the previous meeting of the Board was dispensed with.

The President announced that the By-Laws had been amended by the stockholders as provided by law, and that they now provided for five directors instead of three as formerly. He stated that it was now in order to add two directors to the Board. Whereupon, on motion duly made and seconded and unanimously carried, J. C. Rennie and H. W. Elliott were elected directors. Mr. Rennie and Mr.

Plaintiff's Exhibit No. 1—(Continued)

Elliott being present, accepted the directorship and thereafter participated in the meeting.

The next matter of business was the question of bonding employees of the company who handle money or property of the company. After a general discussion the following resolution was moved by Mr. Dulin, seconded by Mr. Elliott:

Resolved: That all employees of the corporation who handle money, or in whose possession any of the property of the company is placed, or who may draw checks on any of the company's funds, shall be bonded by a fidelity bond in a company, and to an amount satisfactory to the Board.

On vote the resolution was unanimously adopted.

The next order of business was the matter of the collection of accounts in Texas and other mid-continent areas, and the disposition of such collections. After a general discussion the following resolution was moved by Mr. Dulin, seconded by Mr. Elliott:

Resolved: That all collections of accounts in Texas and other mid-continent areas should be forwarded to the principal office of the company in Los Angeles for deposit and that all deposits made in the Houston account shall be made by check from the home office in Los Angeles.

On vote the resolution was unanimously adopted.

The next order of business was the question of advances to employees. The following resolution was moved by Mr. Dulin, seconded by Mr. Elliott:

Plaintiff's Exhibit No. 1—(Continued)

Resolved: That all advances to employees other than those having to do with a revolving expense account, shall be subject to the approval of the Board of Directors.

On vote being taken it was unanimously carried.

The next matter of business was the question of experimental work being carried on and the cost thereof. After a general discussion the following resolution was moved by Mr. Dulin, seconded by Mr. Elliott:

Resolved: That a monthly report to the Board be made by the experimental department covering the number of items under experimentation, a general statement of the progress being made, and a statement of the amount of money being expended on each item.

On vote, the resolution was unanimously adopted.

At this point, Mr. Dulin retired from the meeting, but the Board continued in session.

The next matter of business was the question of the payment of a director's fee for attendance upon Director's meetings. After a general discussion, the following resolution was moved by Mr. Patterson, seconded by Mr. Ballagh:

Resolved: That a fee of \$20.00 shall be paid to each director who is not a stockholder, attending a meeting of the Board at both regular and special meetings.

On vote, the resolution was unanimously adopted.

There being no further business to come before

Plaintiff's Exhibit No. 1—(Continued)
the meeting, on motion duly made, seconded and
carried, the meeting adjourned.

(Sgd) J. C. BALLAGH,
Secretary.

Attest:

(Sgd) C. L. PATTERSON,
President.

MINUTES OF SPECIAL MEETING
OF
BOARD OF DIRECTORS OF PATTERSON-
BALLAGH CORPORATION, LTD.

A special meeting of the Board of Directors of
Patterson-Ballagh Corporation, Ltd., was held at
the office of the company, 1900 East 65th Street,
Los Angeles, California, at the hour of 8:30 A.M.,
on September 27, 1938, pursuant to notice served
on each of the directors at the time and in the man-
ner required by the By-Laws.

Present:

C. L. Patterson
J. C. Ballagh
J. C. Rennie
H. W. Elliott

Absent:

E. S. Dulin

Mr. W. H. Weise was present at the meeting by
invitation as an observer for Byron Jackson Co.

Plaintiff's Exhibit No. 1—(Continued)

The President declared a quorum present and called the meeting to order.

The minutes of the preceding meeting were read and it was moved by Mr. Elliott, seconded by Mr. Rennie, that said minutes be approved as read. Motion unanimously carried.

On the unfinished business, the President reported that application had been made for a blanket bond on all employees, and that the same was now in effect. He stated that this blanket bond was in lieu of the bond covering individuals mentioned in the resolution of the last meeting. The President explained that the blanket bond was simpler than the bond covering specific individuals because the individual applications would have to be filed. It was moved by Mr. Rennie, seconded by Mr. Ballagh, that the blanket bond be approved in the place of the bond covering specific individuals. Motion unanimously carried.

The President reported that the bank at Houston would be notified at once relative to acceptance of deposits only from Los Angeles.

On the matter of advances to officers and employees, the President explained that \$388.85 had been advanced to Mr. J. M. O'Melveny at the time of sickness, and that this sum was covered by a note to the corporation and repayment arranged on a monthly basis. It was moved by Mr. Rennie, seconded by Mr. Elliott, that this arrangement be approved. Motion unanimously carried.

Plaintiff's Exhibit No. 1—(Continued)

The President reported on experimental work and the cost thereof substantially as follows:

1.—Mixing bowl, \$445.81. Dormant at the present time.

2.—Expander Safety Screen. \$18.19. Now on production.

3.—Cat Line Roller, \$79.38. This was a model only, made to the specifications of J. C. Ballagh. Mr. Ballagh reports that this project is now dormant as the model is not of enough interest to the oil companies to justify production, and that in his opinion it would not be approved enough by customers to justify its manufacture.

4.—Derrick Window Roller, \$183.22. This was made on the design of J. C. B. and the first one as made is now on a derrick of the Union Oil Company for test and until the tests are completed no further production will be made.

5.—Experimental Laboratory, \$517.56. Mr. Patterson reported that the laboratory is for experiments being carried on.

6.—Experimental work on materials and molds—especially plastics, \$252.53. These experimentals are being continued.

7.—Miscellaneous, \$463.61. This item includes tubing protector, sucker rod protector and cost of experimental material used in connection therewith. The tubing protector has been o.k.'d as to design and is now on production. On the sucker rod protector this item is still in the experimental stage.

Plaintiff's Exhibit No. 1—(Continued)

8.—Coated Pony Rod. Mr. Patterson reported that the \$10.00 spent on this item to date is included in the miscellaneous item under No. 7. This is still in the experimental stage.

It was moved by Mr. Elliott, seconded by Mr. Rennie, that the President's report of experimental work and the cost thereof, be approved. Motion unanimously carried.

In the matter of general insurance, the President stated that he had obtained two reports, one from Nettleship and one from Maloney, on insurance matters, and stated that the coverage which was previously lacking had been obtained. It was moved by Mr. Rennie, seconded by Mr. Elliott, that the President's report be accepted and approved. Motion unanimously carried.

The next question was the matter of setting aside monthly reserves to cover the estimated income tax payments. It was moved by Mr. Elliott, seconded by Mr. Rennie, that cash equal to the book reserve be deposited in the fund account at the Security-First National Bank to cover the estimated income tax liability on monthly earnings. Motion unanimously carried.

The next matter was the consideration of the salaries of officers. The Secretary reported that a wire had been received from Mr. Dulin requesting that action on this matter be deferred until he could be present, stating his inability to be present at this time. Mr. Elliott likewise stated that inasmuch as he was a new member of the Board, he

Plaintiff's Exhibit No. 1—(Continued)

would like an opportunity to familiarize himself further with the financial condition of the company, its earnings for the current year, and its dividend records of the past. No action was taken on the matter of officers' salaries.

On the matter of employees' salaries, it was moved by Mr. Ballagh, seconded by Mr. Rennie, that the salary of J. M. O'Melveny be raised from \$375.00 to \$450.00 per month, effective October 1, 1938. Motion unanimously carried.

It was moved by Mr. Ballagh, seconded by Mr. Rennie, that the salary of Mr. R. A. McWaid be increased from \$375.00 to \$400.00 per month, effective October 1, 1938. Motion unanimously carried.

Mr. Rennie made a report on the expanding equipment and explained how it was in general use and was scattered and unaccounted for. He suggested that steps be taken to follow more closely the location and tracing of the company's expanding equipment. It was moved by Mr. Elliott, seconded by Mr. Ballagh, that the report be approved. Motion unanimously carried.

The next matter before the Board was the change of the corporation name from Patterson-Ballagh Corporation, Ltd., to Patterson-Ballagh Corporation. After some discussion the following resolution covering an amendment of the Articles of Incorporation to change the corporate name of Patterson-Ballagh Corporation, Ltd., was presented. Upon motion by Mr. Elliott, seconded by Mr. Bal-

Plaintiff's Exhibit No. 1—(Continued)

lagh, and unanimously carried, the following resolution was adopted:

“Whereas, it is deemed by the Board of Directors of this corporation to be to the best interests of its shareholders and all persons interested therein that its Articles of Incorporation be amended for the purpose of eliminating the word “Ltd.” from its corporate name,

“Now, Therefore Be It Resolved, that Article First of the Articles of Incorporation of this corporation shall be amended to read as follows:

‘First: That the name of this corporation shall be Patterson-Ballagh Corporation.’

“Further Resolved, that the Board of Directors of this corporation hereby adopts and approves the foregoing amendment of its Articles of Incorporation:

“Further Resolved: that the President or Vice-President and the Secretary of this corporation shall be and they are hereby authorized and directed to procure the adoption and approval of the foregoing amendment of its Articles of Incorporation by the vote or written consent of the shareholders of the corporation holding at least a majority of the voting power, and, thereafter, to sign and verify by their oaths and to file a certificate in the form and manner required by Section 362-b of the Civil

Plaintiff's Exhibit No. 1—(Continued)

Code of the State of California, and in general to do any and all things necessary to effect said amendment in accordance with the terms, provisions and requirements of said Section 362-b.*

The next order of business was the consideration of increasing purchases of rubber to cover six months futures. The matter was thoroughly discussed and it was moved by Mr. Ballagh, seconded by Mr. Elliott, that authority be given to the officers to increase the purchase of smoke sheet rubber when and as they may deem it advisable to cover six months future requirements of the Company. Motion unanimously carried.

The next matter of business was the question of the infringement of the company's patents and articles by McGregor Brothers of Long Beach. The Secretary explained that the company had received opinions of patent counsel that infringement was taking place, and that an action was justified. It was moved by Mr. Ballagh, seconded by Mr. Rennie, that authority be granted to start an infringement action against McGregor Brothers of Long Beach. Motion unanimously carried.

The Secretary also reported that it seemed advisable to transfer the suit of Ralph Howard from Louisiana to Oklahoma. It was moved by Mr. Ballagh, seconded by Mr. Rennie, that authority be granted to transfer the suit of Ralph Howard from Louisiana to Oklahoma. Motion unanimously carried.

Plaintiff's Exhibit No. 1—(Continued)

The Secretary then pointed out that the company had been invited to join the Metal Trade Manufacturers Association. A general discussion was had in regard to the matter and it was moved by Mr. Ballagh, seconded by Mr. Elliott, that the company join the Metal Trade Manufacturers Association. On vote the following directors voted in the affirmative: J. C. Ballagh, J. C. Rennie, H. W. Elliott; negative, C. L. Patterson.

The matter of the Fair Labor Standards Act of 1938 was brought up and a general discussion was had. It was moved by Mr. Ballagh, seconded by Mr. Elliott, that the employees of Patterson-Ballagh affected by the Act be employed on the basis of a 40-hour week and time and one-half for overtime, effective October 1, 1938. Motion unanimously carried.

The matter of a sick benefit insurance plan for the employees was brought up for discussion by the President. A general discussion was had and it was moved by Mr. Ballagh, seconded by Mr. Patterson, that the insurance and sick benefit plan that has been presented to the employees for their approval, be approved subject to the approval of the majority of the employees. Motion unanimously carried.

Mr. Ballagh then notified the Board that he was considering a proposed trip to the Trinidad and Venezuela area during the coming Spring, should conditions then be favorable. He stated that he did not wish the Board to take any action on the

Plaintiff's Exhibit No. 1—(Continued)

place of such meeting of the Board of Directors of said corporation.

Witness our hands this 13th day of October, 1938.

(Sgd) C. L. PATTERSON,

(Sgd) J. C. BALLAGH,

(Sgd) J. C. RENNIE,

Directors.

MINUTES OF MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A meeting of the Board of Directors of Patterson-Ballagh Corporation was held at the office and principal place of business of the company, 1900 East 65th Street, Los Angeles, California, on the 13th day of October, 1938, at the hour of 8:30 o'clock A.M., there being present and acting at said meeting

C. L. Patterson

J. C. Ballagh

J. C. Rennie

E. S. Dulin

H. W. Elliott

The President declared a quorum present and called the meeting to order.

The Secretary presented to the meeting the original waiver of notice and consent to the meeting, signed by all of the directors, which waiver of notice was, upon motion duly made and carried, ordered to be made a part of the records of this meeting and

Plaintiff's Exhibit No. 1—(Continued)

entered in the Minute Book on the page immediately preceding the minutes of this meeting.

The first order of business was the reading of the minutes of the preceding meeting of the Board. The minutes were read and it was moved by Mr. Elliott, seconded by Mr. Rennie that the minutes be approved as read. Motion unanimously carried.

The Secretary then pointed out the necessity of appointing a resident agent in Louisiana to succeed Mr. R. C. Medearis. It was moved by Mr. Rennie, seconded by Mr. Ballagh, that Mr.

be appointed as resident agent in Louisiana to succeed R. C. Medearis. Motion unanimously carried.

The next order of business was the consideration of the increase in salaries of employees.

The President recommended an increase in salary of \$10.00 per month to W. T. Gardner and \$10.00 per month to Ross Mauldin, upon the recommendation of Mid-Continent Sales Manager, J. M. O'Melveny. It was moved by Mr. Rennie, seconded by Mr. Elliott, that the salaries of Mr. Gardner and Mr. Mauldin be each increased \$10.00 per month, effective October 1, 1938. Motion unanimously carried.

Mr. Dulin then spoke of the advisability of paying the balance due on the mortgage on the factory property, and thereby clear the company of all indebtedness. After a general discussion it was moved by Mr. Dulin, seconded by Mr. Rennie, that the officers of the corporation ascertain from the Bank upon what basis the present mortgage could be paid and

Plaintiff's Exhibit No. 1—(Continued)

report their findings to the next meeting. Motion unanimously carried.

The next matter before the meeting was the matter of the increase in the officers' salaries. A general discussion was had and it was moved by Mr. Dulin, seconded by Mr. Elliott, that the salary of Mr. C. L. Patterson, President, be increased to \$1500.00 per month, effective September 1, 1938. Motion unanimously carried. It was thereupon moved by Mr. Dulin, seconded by Mr. Elliott, that the salary of Mr. J. C. Ballagh, Secretary-Treasurer of the company, be increased to \$1500.00 per month, effective September 1, 1938. Motion unanimously carried.

The next question was the matter of a possible advantage to the company by changing the fiscal year to close as of November 30, 1938. A general discussion was had and it was moved by Mr. Dulin, seconded by Mr. Elliott, that the fiscal year of the corporation be fixed to close as of November 30th of each year, subject to approval of our accountants, in place of December 31st, as at present designated. Motion unanimously carried.

There being no further business to come before the meeting, on motion duly made, seconded and carried, the meeting adjourned.

Attest:

(Sgd)

J. C. BALLAGH,
Secretary.

(Sgd)

C. L. PATTERSON,
President.

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A meeting of the Board of Directors of Patterson-Ballagh Corporation was held at the office and principal place of business of the company, 1900 East 65th Street, Los Angeles, California, on the 3rd day of November, 1938, at the hour of 8:30 o'clock a.m., pursuant to notice issued.

Present:

J. C. Ballagh
C. L. Patterson
E. S. Dulin
H. W. Elliott
J. C. Rennie

being all of the Directors of said corporation.

The President declared a quorum present and called the meeting to order.

The first order of business was the reading of the minutes of the preceding meeting of the Board. The minutes were read and it was moved by Mr. Elliott, seconded by Mr. Rennie that the minutes be approved as read. Motion unanimously carried.

The next order of business was the matter of the contract with the Medearis Oilwell Supply Company which was terminated October 28, 1938. A general discussion was had and it was moved by Mr. Elliott, seconded by Mr. Dulin, that a letter be sent to Medearis Oilwell Supply Company by special delivery, registered mail, calling attention to the thirty

Plaintiff's Exhibit No. 1—(Continued)
day cancellation clause in the contract. Motion unanimously carried.

It was moved by Mr. Dulin, seconded by Mr. Rennie, that Mr. Elliott render an opinion at the next meeting as to whether the company had cause of action against Medearis Oilwell Supply Company for breach of contract as representative of this company. Motion unanimously carried.

There being insufficient time to discuss the further business scheduled for this meeting, on motion duly made, seconded and carried, the meeting adjourned until Thursday, November 10, 1938, at 8:30 a.m.

Attest:

(Sgd)

J. C. BALLAGH,
Secretary.

(Sgd)

C. L. PATTERSON,
President.

MINUTES OF SPECIAL MEETING OF BOARD
OF DIRECTORS OF PATTERSON-
BALLAGH CORPORATION

A special meeting of the Board of Directors of Patterson-Ballagh Corporation was held at the office of the company, 1900 East 65th Street, Los Angeles, California, on the 10th day of November, 1938, at the hour of 8:30 a.m., pursuant to notice issued.

Plaintiff's Exhibit No. 1—(Continued)

Present:

C. L. Patterson

J. C. Ballagh

H. W. Elliott

J. C. Rennie

Absent:

E. S. Dulin

The President declared a quorum present and called the meeting to order.

The minutes of the preceding meeting were read and it was moved by Mr. Elliott, seconded by Mr. Rennie, that said minutes be approved as read. Motion unanimously carried.

On the unfinished business, Mr. Elliott stated that, after making a careful study of the contract and correspondence which has taken place, and facts pertaining to the notice of termination of the contract by Medearis Oilwell Supply Company, it is his opinion there is no cause of action which would justify this company in filing suit against Medearis Oilwell Supply Company. Mr. Elliott recommended that no action be taken at the present time. On motion of Mr. Rennie, seconded by Mr. Ballagh, the recommendation was unanimously accepted.

The officers reported that the bank would be willing to accept payment of the mortgage without any bonus. The President stated, however, in view of the present state of the business in California, particularly the competition that has developed, that the matter of payment of the mortgage be deferred for the present. It was moved by Mr. Elliott, sec-

Plaintiff's Exhibit No. 1—(Continued)

onded by Mr. Rennie, that the President's recommendation be accepted and payment of the mortgage be deferred. Motion unanimously carried.

Mr. Rennie stated that he was not prepared at the present time to make a final report on the matter of the change in the fiscal year to end November 30th, but that before the end of this month (November) he will be able to do so, based upon the financial statement of the company at the close of business as of October 31, 1938, which is not available at this time. It was the concensus of opinion of the Board that another meeting should be held before the close of the month.

The President reported on experimental work and the cost thereof substantially as follows:

1.—Mixing Bowl	\$ 445.81
2.—Expander Screens	18.19
3.—Cat Line Roller	79.38
4.—Window Roller	184.97
5.—Experimental Laboratory	525.58
6.—Bakelite	1,334.72
7.—Wiper25
	\$2,588.90

It was moved by Mr. Elliott, seconded by Mr. Ballagh, that the President's report of experimental work and the cost thereof, be approved. Motion unanimously carried.

Mr. Rennie recommended that a study be made of the sales and financial condition of the company with a view to establishing an appropriation on a

Plaintiff's Exhibit No. 1—(Continued)

flat basis, or percentage basis, for the development of new items and for sales promotion. It was moved by Mr. Ballagh, seconded by Mr. Elliott, that Mr. Rennie's recommendation be accepted. Motion unanimously carried.

Mr. Rennie was requested to make a detailed report after a study of the sales and financial condition of the company had been made.

It was moved by Mr. Elliott, seconded by Ballagh, that the company appropriate any part up to One Hundred Dollars to protect or to progress with the development of the new expander which Mr. Patterson discussed with the Board. Motion unanimously carried.

It was moved by Mr. Rennie, seconded by Mr. Elliott, that Mr. H. C. Armington be reimbursed by the company for his expenses in connection with engineering work in the development of expanding equipment. Motion unanimously carried.

The Board approved the contribution to the National Association of Manufacturers, authorized by J. C. Ballagh. The Board also approved of the reimbursement to J. C. Ballagh for personal contribution made to the State Chamber of Commerce.

There being no further business to come before the meeting, on motion duly made, seconded and carried, the meeting adjourned.

Attest:

(Sgd)

J. C. BALLAGH,

Secretary.

(Sgd)

C. L. PATTERSON,

President.

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION,

A meeting of the Board of Directors of Patterson-Ballagh Corporation was held at the office and principal place of business of the company, 1900 East 65th Street, Los Angeles, California on the 28th day of November, 1938, at the hour of 8:30 o'clock a. m., pursuant to notice issued.

There were present and acting at said meeting

C. L. Patterson

J. C. Ballagh

E. S. Dulin

H. W. Elliott

J. C. Rennie

being all of the Directors of said corporation.

The President declared a quorum present and called the meeting to order.

The first order of business was the reading of the minutes of the preceding meeting of the Board. The minutes were read and it was moved by Mr. Elliott, seconded by Mr. Rennie, that the minutes be approved as read. Motion unanimously carried.

The balance sheet of the corporation for the month ending October 31, 1938, was presented to the Board by Mr. Patterson. On motion of Mr. Elliott, seconded by Mr. Dulin, and unanimously carried, the statement was received in order to file.

The President reported on experimental work and

Plaintiff's Exhibit No. 1—(Continued)

the cost thereof, for the Month of October, substantially as follows:

1.—Mixing Bowl	\$26.83
2.—Window Roller	1.79
3.—Split Sleeve	23.05
4.—Expander Stretcher	47.98
	<hr/>
	\$99.65

It was moved by Mr. Elliott, seconded by Mr. Dulin, that the President's report of experimental work and the cost thereof, be approved. Motion unanimously carried.

On the unfinished business Mr. Patterson presented to the Board the report of Mr. Rennie of the sales and financial condition of the corporation, which he requested Mr. Rennie to read in its entirety. After a brief discussion, and owing to the fact that there was not enough time to pass on the report at this meeting, it was agreed that the report would be discussed at a meeting to be held on Friday, December, 2, 1938, at 8:30 a. m.

The next matter before the Board was the recommendation of Mr. Rennie regarding the change in the fiscal year to end November 30, 1938, instead of December 31st, as heretofore. It was moved by Mr. Ballagh, seconded by Mr. Elliott, and unanimously carried, that this company make formal application to the Department of Internal Revenue, for the change in the Fiscal Year to end November 30th, and that the officers be instructed to take the necessary steps to accomplish this change.

Plaintiff's Exhibit No. 1—(Continued)

The next matter to come up for discussion was the payment of a bonus to employees. After a general discussion, and upon motion duly made and seconded it was unanimously

Resolved, That the officers of Patterson-Ballagh Corporation work out a fair and equitable basis of bonus to all employees, other than executives, and that the method of working out not be set as a precedent for future years;

Resolved Further, that the amount of bonus to be paid shall not exceed \$2500.00, for the eleven months ending November 30, 1938, and shall be payable on December 16, 1938.

The next matter to come up for discussion was presented by Mr. Ballagh in the form of two new items which he suggested could be taken over by Patterson-Ballagh Corporation for sale and service on a royalty basis in the Mid-Continent, and also for export.

1.—The McQuiston Grinder.

2.—The Edwards Wire Rope Clamp.

After a general discussion, it was the concensus of opinion of the board that these two items should be investigated very carefully and an analysis made and presented to the Board before any action was taken.

On motion duly made, seconded and carried, the meeting adjourned at 9:40 a. m.

(Sgd)

J. C. BALLAGH,
Secretary.

(Sgd)

C. L. PATTERSON,
President.

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A meeting of the Board of Directors of Patterson-Ballagh Corporation was held at the office and principal place of business of the company, 1900 East 65th Street, Los Angeles, California on the 2nd day of December, 1938, at the hour of 8:30 a. m., as agreed at the previous meeting.

There were present and acting at said meeting

C. L. Patterson

J. C. Ballagh

E. S. Dulin

H. W. Elliott

J. C. Rennie

being all of the Directors of said corporation.

The President declared a quorum present and called the meeting to order.

The first order of business was the reading of the minutes of the preceding meeting of the Board. The minutes were read and it was moved by Mr. Elliott, seconded by Mr. Rennie, that the minutes be approved as read. Motion unanimously carried.

The first matter to be discussed was the overtime payment to employees affected by the Fair Labor Standards Act of 1938. It was moved by Mr. Renee, seconded by Mr. Dulin, and unanimously carried, that the following Resolution be adopted to supersede the Resolution adopted at the meeting held September 27, 1938:

Plaintiff's Exhibit No. 1—(Continued)

Resolved, That all office employees of this corporation be employed on the basis of a 40-hour week, with time and one-half for all overtime worked over 44 hours in any one week;

Resolved Further, That the salary of each such employee shall be equal in amount on a 40 hour basis to that paid prior to October 1, 1938, and that any overtime paid for the period October 1st to November 30, 1938, be and it is hereby approved.

A discussion was had relative to a donation to the Community Chest and it was unanimously agreed that a contribution equal to that made last year should be forwarded to the Community Chest.

On the unfinished business the report of Mr. Rennie, of the sales and financial condition of the corporation, was presented for discussion. In order to avoid a prolonged discussion it was agreed to take one item at a time until the entire report was covered.

The first item up for discussion was Gross Profit from Manufacturing and the practicability of running the business strictly on a poundage basis. It was moved by Mr. Dulin, seconded by Mr. Elliott, that the executive officers review the price situation, also review prices for the coming year, and that the comments as set forth by Mr. Rennie in his report be given careful consideration. Motion unanimously carried.

The next item discussed was the Selling Expense. This item was discussed at great length, particular-

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A meeting of the Board of Directors of Patterson-Ballagh Corporation was held at the office and principal place of business of the company, 1900 East 65th Street, Los Angeles, California, on the 20th day of December, 1938, at the hour of 8:30 o'clock a. m., pursuant to notice issued.

Present: C. L. Patterson
J. C. Ballagh
H. W. Elliott
J. C. Rennie

Absent: E. S. Dulin

The President declared a quorum present and called the meeting to order.

The first order of business was the reading of the minutes of the preceding meeting of the Board. The minutes were read and it was moved by Mr. Elliott, seconded by Mr. Rennie, that the minutes be approved as read. Motion unanimously carried.

The President reported on experimental work and the cost thereof, for the month of November, substantially as follows:

1.—Mixing Bowl	\$112.77
2.—Catline Roller	9.62
3.—Expander Stretcher	175.33
	<hr/>
Total.....	\$297.72

Plaintiff's Exhibit No. 1—(Continued)

It was moved by Mr. Elliott, seconded by Mr. Rennie, that the President's report of experimental work and the cost thereof, be approved. Motion unanimously carried.

On the unfinished business, Mr. Ballagh reported that while in Houston he had apprised Mr. O'Melveny of the fact that the Board considered his expenses to be exorbitant and that every effort should be made to reduce this item. Mr. Ballagh stated that what he had in mind was a budget plan which would be gone over by Mr. Rennie with Mr. O'Melveny when he came to California after the first of the year. The subject was discussed at length and it was unanimously agreed to carry the matter over as unfinished business.

The next item was the McQuiston Grinder. Mr. Ballagh reported that he had investigated the possibilities of this item in the Mid-Continent and felt sure that there was some money to be made on the item but was not yet fully satisfied that we were going into it on the right basis. After a general discussion it was unanimously agreed to carry the matter over as unfinished business.

The Edwards Dead Line Rope Clamp and Storage Reel was discussed next. Mr. Ballagh reported that he had investigated the possibilities of this item in the Mid-Continent and recommended that Patterson-Ballagh Corporation enter into negotiations with E. H. Edwards Company for the handling of this item. It was moved by Mr. Ballagh, seconded by Mr. Elliott, and unanimously car-

Plaintiff's Exhibit No. 1—(Continued)

ried, that Patterson-Ballagh Corporation acquire the exclusive manufacturing and sales rights, including export, for the Edwards Dead Line Rope Clamp and Storage Reel on a royalty of five (5) per cent of cash receipts from sales, without any minimum sales requirement or guarantee.

Mr. Patterson stated it had been suggested by Mr. Rennie that he would prefer to have Miss Nolan excused from the meeting at this point.

Mr. Patterson then made a motion that Mr. Rennie be appointed Office Manager in charge of all office work, all office employees, all records of the corporation, with power to hire and fire employees, at a salary of \$400.00 per month, effective December 1, 1938.

After a discussion as to the extent of this authority, Mr. Elliott remarked that this was more authority than had been given anyone else in the organization, and he inquired whether this authority was to extend to the office in Houston, which Mr. Patterson said was the intention.

Mr. Ballagh then stated that when this matter was discussed at a previous meeting, Mr. Dulin had expressed the wish to have the matter of Mr. Rennie's employment held over until a later meeting to allow him time to study it over. Mr. Ballagh further stated that, inasmuch as Mr. Dulin was not present to vote, he preferred to not vote on the question.

Mr. Elliott stated that, inasmuch as the matter concerned Mr. Rennie, he (Mr. Rennie) could not

Plaintiff's Exhibit No. 1—(Continued)

Name	No. of Shares
Ballagh, J. C.	125
Byron Jackson Co., (a corporation) by E. S. Dulin, Pres.	249
Dulin, E. S.	1
Highland Investment Corp., Ltd. by J. C. Ballagh, Pres.....	250
Patterson, C. L.	375
Total Capital Stock	1,000

The Secretary reported that the above number of shares represented all of the issued and outstanding stock as of said date.

The Chairman announced that the next business before the meeting was the election of a Board of Directors for the ensuing year.

Upon motion duly made and seconded it was unanimously

Resolved, That the incumbent Directors be re-elected for the ensuing year, or until their successors are chosen and elected, which act can only be accomplished by the majority approval of the Stockholders.

The financial report of the corporation for the period ending November 30, 1938, as prepared under the direction of the Secretary-Treasurer, was presented and unanimously approved, and a summary of same was ordered attached hereto and made a part of the minutes of this meeting.

There being no further business to come before

Plaintiff's Exhibit No. 1—(Continued)

the meeting, on motion duly made, seconded and carried, it was thereupon adjourned.

Chairman.

(Sgd)

J. C. BALLAGH,

Secretary.

PATTERSON-BALLAGH CORPORATION

Secretary's Report of 1938 Operations to November 30, 1938

INCOME and PROFIT and LOSS

Gross Sales		\$271,910.78
Cost of Goods Sold	\$68,382.43	
Royalties	12,813.13	81,195.56
		<hr/>
Gross Profit from Manufacturing		190,715.22
Operating Expenses		150,891.81
		<hr/>
Net Income from Operations		39,823.41
Other Expenses—Less Other Income		7,439.07
		<hr/>
Net Gain for period, before Income Tax Deduction		32,384.34
Less Estimated Federal & State Taxes.....		7,087.99
		<hr/>
		25,296.35

Summary of Surplus

Balance as per Ledger November 30, 1938.....		\$105,590.46
1938 Credits:		
Net Profit from Operations (before Federal & State Tax)		32,384.34
		<hr/>
		137,974.80
1938 Charges:		
Federal Income Tax 1937	4,956.50	
Dividends Paid July 7, 1938.....	6,000.00	
Accrued Capital Stock Tax	71.00	11,027.50
		<hr/>
Total Earned Surplus at 11/30/38.....		126,947.30

Plaintiff's Exhibit No. 1—(Continued)

Appreciated Surplus		1,611.86
		<hr/>
Balance, Surplus as per Ledger 11/30/38.....		128,559.16
Less Estimated Taxes for 1938:		
Est. Federal Income Tax 1938.....	5,887.99	
Est. State Franchise Tax 1938.....	1,200.00	7,087.99
		<hr/>
Surplus Balance after Estimated Taxes.....		\$121,471.17
 Note: Estimated Federal Income Tax.....	5,887.99	
do State Franchise Tax	1,200.00	
		<hr/>

Total..... 7,087.99 for 1938 operations, payable during 1939. 1938 tax of \$4,956.50 has been deducted to show surplus of \$128,559.16, as shown on our books. Item of \$5,887.99 is chargeable against surplus in 1939, while item of \$1,200.00 is chargeable against 1939 Profit and Loss. For this reason net profit from operations is shown before tax.

I, J. C. Ballagh, as Secretary-Treasurer of Patterson-Ballagh Corporation, hereby certify that the foregoing report is true, to the best of my knowledge and belief.

(Sgd) J. C. BALLAGH

MINUTES OF ANNUAL MEETING OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

The annual meeting of the directors of Patterson-Ballagh Corporation was held at the office and principal place of business of the company, 1900 East 65th Street, Los Angeles, California, on the 27th day of January, 1939, immediately following the annual meeting of the stockholders.

Plaintiff's Exhibit No. 1—(Continued)

Present:

C. L. Patterson
 J. C. Ballagh
 E. S. Dulin
 J. C. Rennie

Absent:

H. W. Elliott

The meeting was called to order *Mr. Mr. E. S. Dulin*, who acted as Temporary Chairman of the meeting, and Mr. J. C. Ballagh acted as Secretary.

The Chairman stated that the first business to come before the meeting was the election of officers for the ensuing year, or until their successors are chosen, appointed and elected by the Board. On motion made and seconded the following officers were nominated for re-election:

C. L. Patterson, President
 J. C. Ballagh, Secretary-Treasurer
 M. G. Nolan, Asst. do

A vote was had on the nominations of the above named persons, and the results were as follows:

E. S. Dulin	Yes
C. L. Patterson	Yes
J. C. Rennie	Yes
J. C. Ballagh	No

The Chairman thereupon passed the meeting over to Mr. Patterson, with the proviso that the records show Mr. Ballagh's reason for voting 'no'.

MR. Ballagh: "I am voting 'no' pending an agreement with Mr. Patterson as to the dele-

Plaintiff's Exhibit No. 1—(Continued)

gation of authority between us. I am asking that this matter be again brought up at the next directors' meeting, at which Mr. Elliott is present. For ten years the corporation has operated with an equal flow of authority as between Petterson and myself. Mr. Patterson refuses at this time to agree to the fact that the President and Secretary of Patterson-Ballagh Corporation have equal authority in the operation of the corporation."

The Directors were asked if they wished to change their vote after having heard Mr. Ballagh's statement. Mr. Dulin, Mr. Patterson and Mr. Rennie voted the same. Mr. Rennie further stated that until other facts were known, or until he had reason to change his opinion one way or the other, he would vote as he had voted

The next matter of business was the discussion of Mr. Rennie's employment with the company.

Upon motion duly made and seconded, the following Resolutions were unanimously adopted:

Resolved, That Mr. Rennie be instructed by the Board to render a report to the individual members of the Board by February 8th, and that such report shall be the basis of full discussion and disposition by the Board at a meeting on February 10th, and that this report shall contain among other things, the following:

(1) A proposed budget for the year 1939, both income and expenditures.

(2) An analysis of the efficiency of the

Plaintiff's Exhibit No. 1—(Continued)

operations of the office, together with any suggestions for change in personnel of the office force, or changes in compensation, and that such information or suggestions be obtained from any officer or department head, and that any one, either officer or employee, who does not cooperate fully upon same, that particular party shall be reported to the Board.

Resolved Further, That the arrangement with Mr. Rennie be continued on a temporary basis until the above mentioned report is rendered and the Board takes action on it, at which time the Board is to determine definitely Mr. Rennie's status and set his compensation.

On motion of Mr. Dulin, seconded by Mr. Ballagh, and unanimously passed, the following resolutions were adopted:

Resolved, that the officers' salaries, viz: Mr. Patterson and Mr. Ballagh, be each One Thousand (\$1,000.00) Dollars per month, effective January 1, 1939.

Resolved, That all company correspondence shall be placed in the company files. Correspondence from officers shall be placed in separate files, available to officers and directors.

The next matter to be discussed was the sale of Patterson-Ballagh Wire Line Guides to Medearis Oilwell Supply Company. It was unanimously agreed that they be allowed to buy on the basis of a regular supply store.

Plaintiff's Exhibit No. 1—(Continued)

The proposed resolution regarding the Experimental Department, as offered by Mr. Ballagh, was tabled until the report to be presented by Mr. Rennie was received.

The matter of the McQuiston Grinder and the deal with the Oil Well Supply Company on the Swivel Bumper were tabled until the next meeting.

On motion duly made, seconded and carried, the meeting adjourned at 11:30 a. m.

(Sgd) J. C. BALLAGH

Secretary

(Sgd) C. L. PATTERSON

Chairman

MINUTES OF MEETING OF BOARD OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A meeting of the Board of Directors of Patterson-Ballagh Corporation was held at the office and principal place of business of the company, 1900 East 65th Street, Los Angeles, California, on the 10th day of February, 1939, at the hour of 8:30 o'clock a. m., as agreed at the previous meeting.

There were present and acting at said meeting

C. L. Patterson

J. C. Ballagh

E. S. Dulin

H. W. Elliott

J. C. Rennie

being all of the Directors of said corporation.

Plaintiff's Exhibit No. 1—(Continued)

The President declared a quorum present and called the meeting to order.

The first order of business was the reading of the minutes of the preceding meeting of the Board. The minutes were read and it was moved by Mr. Dulin, seconded by Mr. Elliott, that the minutes be approved as corrected. Motion unanimously carried.

The matter of the re-election of officers for the ensuing year was reviewed, and Mr. Ballagh withdrew his objections as expressed at the previous meeting.

The budget of income and expenditures for the year 1939, as prepared by Mr. Rennie, was received and presented for discussion. It was the consensus of opinion that certain items,—viz: advertising, selling expense, donations, subscriptions to various publications, et cetera, were too high.

It was moved by Mr. Dulin, seconded by Mr. Ballagh, that the officers of the corporation, assuming their projected sales to be as set forth in the report, handle their expenses and revise the budget to show a gross profit of \$50,000.00. Motion unanimously carried.

It was suggested by Mr. Dulin that immediate steps be taken to effect this change.

The next matter to be discussed was the report of Mr. Rennie on the efficiency of the operations of the office, as requested at the previous meeting.

At this point Mr. Ballagh announced that he and Mr. Patterson were working on a plan which they

Plaintiff's Exhibit No. 1—(Continued)

hoped would be of benefit to the company, and that they would probably be ready to present this plan to the Board within a few days. It was unanimously agreed to have a meeting of the Board of Directors not later than February 17th.

The proposed deal with the Oil Well Supply Company, regarding Swivel Bumpers, was discussed. It was moved by Mr. Dulin, seconded by Mr. Ballagh, that a deal be worked out with the Oil Well Supply Company on a unit royalty basis, instead of granting a paid up license. Motion unanimously carried.

On motion duly made, seconded and carried, the meeting adjourned at 10:45 a. m.

(Sgd) J. C. BALLAGH

Secretary

(Sgd) C. L. PATTERSON

President

MINUTES OF SPECIAL MEETING
OF BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A special meeting of the Board of Directors of Patterson-Ballagh Corporation was held on the 15th day of February, 1939, at 1900 East 65th Street, Los Angeles, California, at the hour of 4:00 o'clock P. M. of said day, pursuant to the Consent to Hold and Waiver of Notice signed by all of the Direc-

Plaintiff's Exhibit No. 1—(Continued)

tors and hereinafter in the minutes of the meeting contained.

Directors Present:

J. C. Ballagh
E. S. Dulin
C. L. Patterson
J. C. Rennie

Directors Absent:

H. W. Elliott

Also present:

Howard Burrell
D. G. Miller

The Consent to Hold and Waiver of Notice, which was signed by each and every Director of the corporation is as follows:

CONSENT TO HOLD AND WAIVER OF
NOTICE OF SPECIAL MEETING OF BOARD
OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

Know All Men by These Presents:

That we, the undersigned, being all of the Directors of Patterson-Ballagh Corporation, by mutual consent and understanding beforehand, hereby consent to hold a special meeting of the Board of Directors of said corporation at 1900 East 65th Street, Los Angeles, California, on the 15th day of February, 1939, at the hour of 4:00 o'clock P. M. of said

Plaintiff's Exhibit No. 1—(Continued)

day, and we agree that all the acts and proceedings of said meeting shall be as valid as if had or taken at a meeting duly and regularly called and noticed.

We further waive all notice of the time, place and purpose of said meeting, whether required by the By-Laws of this corporation, or otherwise.

In Witness Whereof, we have hereunto subscribed our signatures this 15th day of February, 1939.

(Sgd)	C. L. PATTERSON
(Sgd)	H. W. ELLIOTT
(Sgd)	J. C. BALLAGH
(Sgd)	E. S. DULIN
(Sgd)	J. C. RENNIE

Reading of Minutes

The President called the meeting to order and presided thereover until his retirement therefrom. He announced that the first business before the same was a consideration of the minutes of the meeting of the Board of Directors held on the 10th day of February, 1939, and, thereupon, on motion of Director Dulin, seconded by Director Ballagh and unanimously carried, the matter of the consideration of said minutes was postponed until the next meeting of the Board of Directors for the purpose of conserving time.

Resignation of J. C. Rennie

There was then presented to the meeting the resig-

Plaintiff's Exhibit No. 1—(Continued)
nation of J. C. Rennie as a Director of the corporation, which read as follows:

“Los Angeles, California
January 27, 1939

To the Board of Directors
Patterson-Ballagh Corporation
Los Angeles, California

Gentlemen:

I herewith tender my resignation as a Director of Patterson-Ballagh Corporation, to take effect at the pleasure of the Board of Directors and majority approval of the Stockholders of the Corporation.

Very truly Yours
J. C. RENNIE”

Approved 2/15/39

C. L. PATTERSON
By DE MONT G. MILLER proxy
J. C. BALLAGH

HIGHLAND INVESTMENT
CO. LTD.
J. C. BALLAGH,
Pres.

It was pointed out that a majority of the shareholders had approved the resignation and, thereupon, on motion of Director Ballagh, second by Director Patterson and carried, Director Dulin voting in the negative, it was

Resolved, that the resignation of J. C. Rennie as a Director of this corporation presented at

Plaintiff's Exhibit No. 1—(Continued)

this meeting shall be and the same is hereby accepted.

Compensation of J. C. Rennie

Director Ballagh discussed the matter of terminating the services of J. C. Rennie with the corporation and presented a check covering the same to the date of the meeting. A discussion followed as to the terms of hiring under which he had been employed and it was the concensus of opinion that the employment should be terminated as at the close of business on February 28, 1939, and that J. C. Rennie be given immediate notice thereof.

Thereupon, on motion of Director Ballagh, seconded by Director Patterson and carried, Director Dulin voting in the negative, it was

Resolved, that this corporation terminate the employment of J. C. Rennie as at the close of business on February 28, 1939, and that he be given immediate notice of such action and be paid his regular compensation for the month of February, as in the past, upon his rendition of the services contemplated in his employment.

Thereupon, J. C. Rennie was advised of the action of the Board in respect to his resignation and the termination of his employment and retired from the meeting.

Election of De Mont G. Miller

The meeting then considered the matter of the election of a Director to fill the vacancy created by

Plaintiff's Exhibit No. 1—(Continued)

the resignation of J. C. Rennie, and Director Ballagh nominated De Mont G. Miller as a Director to fill such vacancy.

Thereupon, on motion of Director Ballagh, seconded by Director Dulin and unanimously carried, it was

Resolved, that the nominations be closed and that De Mont G. Miller shall be and he is hereby elected and appointed as a Director of this corporation to fill the vacancy created by the resignation of J. C. Rennie, to be effective immediately.

Resignation of C. L. Patterson

There was then presented to the meeting the resignation of C. L. Patterson as the President and a Director of the corporation, which read as follows:

“Los Angeles, California
Feb 15 - 1939.

Patterson-Ballagh Corporation
Los Angeles, California

Gentlemen:

The undersigned hereby tenders his resignation as the President and a Director of Patterson-Ballagh Corporation, the same to take effect immediately upon delivery hereof to you.

Very truly yours,
C. L. PATTERSON”

Thereupon, on motion of Director Ballagh, sec-

Plaintiff's Exhibit No. 1—(Continued)

seconded by Director Dulin and unanimously carried, it was

Resolved, that the resignation of C. L. Patterson as the President and a Director of this corporation, presented at this meeting, shall be and the same is hereby accepted.

Thereupon, C. L. Patterson retired from the Chair and the meeting and Director Ballagh took the Chair and presided over the meeting until the election of a President to fill the vacancy created by the resignation of C. L. Patterson.

Communication from C. L. Patterson

C. L. Patterson then delivered to and left with the Directors a communication addressed to the corporation, advising of his execution of an option and agreement with DeMont G. Miller covering the sale and purchase of the shares of the capital stock of the corporation held by him and calling attention to an agreement between him and DeMont G. Miller in respect to the application of dividends declared on the shares covered by the option agreement during the existence thereof.

Election of President

The meeting then proceeded with the matter of electing a President of the corporation to fill the vacancy existing in said office, and Director Ballagh placed the name of Director Miller in nomination.

There being no further nominations, on motion of Director Ballagh, seconded by Director Dulin and unanimously carried, it was

Resolved, that the nominations be closed and

Plaintiff's Exhibit No. 1—(Continued)

that De Mont G. Miller shall be and is hereby elected and appointed as the President of this corporation to fill the vacancy caused by the resignation of C. L. Patterson, to be effective immediately.

Thereupon, Director Ballagh retired from the Chair and Director Miller, as the President of the corporation, took the same and presided over the meeting during the balance thereof.

Election of H. C. Armington

The meeting then proceeded with the matter of electing a Director to fill the vacancy created by the resignation of C. L. Patterson as such, and Director Ballagh placed the name of H. C. Armington in nomination.

There being no further nominations, on motion of Director Ballagh, seconded by Director Dulin and unanimously carried, it was

Resolved, that H. C. Armington shall be and he is hereby elected and appointed as a Director of this corporation to fill the vacancy created by the resignation of C. L. Patterson as such, to be effective immediately.

Compensation of President

The meeting then proceeded with the matter of considering the compensation to be paid to the President for his services and the advisability of designating him as General Manager of the business and affairs of the corporation. The suggestion was made that such compensation be fixed in the same

Plaintiff's Exhibit No. 1—(Continued)

amount as had been paid the former President since the first of the current year.

Thereupon, on motion of Director Ballagh, seconded by Director Dulin and unanimously carried, it was

Resolved, that the President of this corporation shall be the General Manager of its business and affairs and that he shall receive as compensation for his services commencing as of February 15, 1939, the sum of \$1,000.00 a month, payable in the same manner and on the same dates as other executive salaries.

Checks and Drafts

It was called to the attention of the meeting that the authority of C. L. Patterson to sign checks and drafts on the bank account of the corporation should be revoked by reason of his retirement therefrom and that the President and General Manager should be given the same authority in this respect as had formerly been vested in C. L. Patterson.

Thereupon, on motion of Director Ballagh, seconded by Director Dulin and unanimously carried, it was

Resolved, that the authority heretofore given to C. L. Patterson to sign checks and drafts for and on behalf of this corporation shall be and the same is hereby terminated and rescinded immediately and that all depositaries of the funds of this corporation shall be advised at once of the termination and rescission of said authority.

Plaintiff's Exhibit No. 1—(Continued)

Further Resolved, that De Mont G. Miller shall be authorized to sign checks and drafts on the funds of this corporation in the same manner and to the same extent as C. L. Patterson has been authorized so to do and that the depositaries of the funds of this corporation shall be advised of the authority herein placed in De Mont G. Miller.

Adjournment

There being no further business, on motion, duly seconded and unanimously carried, the meeting was adjourned.

(Sgd)

J. C. BALLAGH

Secretary

Los Angeles, California

February 15, 1939.

Patterson-Ballagh Corporation,
1900 East 65th Street
Los Angeles, California

Gentlemen:

The undersigned wishes to advise that he has made and executed with De Mont G. Miller an option and agreement covering the sale and purchase of the shares of the capital stock of Patterson-Ballagh Corporation held by him, and there is being forwarded to you herewith a copy of his said agreement for your files.

Mr. De Mont G. Miller has paid to the undersigned or for his account the sum of \$2,500.00 mentioned in paragraph First of the agreement and

Plaintiff's Exhibit No. 1—(Continued)

the sum of \$7,500.00 mentioned in paragraph Fourth thereof, and has executed and delivered the promissory note in said latter paragraph contemplated. You are also advised that the stock certificates mentioned in the agreement have been delivered by Security-First National Bank of Los Angeles to De Mont G. Miller and he has deposited them with said bank as collateral security for the performance of his obligations provided in his promissory note.

You are therefore advised and instructed to pay to De Mont G. Miller all dividends up to and including the amount of \$6.00 per share declared in any calendar year on the shares evidenced by the certificates mentioned in said agreement and not transferred on your books and records to him unless you shall be hereafter advised and instructed to the contrary. You will of course pay all dividends in excess of \$6.00 per share declared in any calendar year on said shares to Security-First National Bank of Los Angeles, Seventh and Spring Streets office, for the account of the undersigned to be credited on the obligations of De Mont G. Miller as in said agreement provided.

Very truly yours,

(Sgd) C. L. PATTERSON

Plaintiff's Exhibit No. 1—(Continued)

Los Angeles, California

Feb 15 - 1939.

Patterson-Ballagh Corporation,
Los Angeles, California

Gentlemen:

The undersigned hereby tenders his resignation as the President and a Director of Patterson-Ballagh Corporation, the same to take effect immediately upon delivery hereof to you.

Very truly yours,
(Sgd) C. L. PATTERSON

Los Angeles, California,
January 27, 1939.

To the Board of Directors
Patterson-Ballagh Corporation
Los Angeles, California

Gentlemen:

I herewith tender my resignation as a Director of Patterson-Ballagh Corporation, to take effect at the pleasure of the Board of Directors and majority approval of the Stockholders of the Corporation.

Very truly yours,
(Sgd) J. C. RENNIE,

Approved 2/15/39

C. L. PATTERSON,
(Sgd) By DeMONT G. MILLER,
Proxy,

(Sgd) J. C. BALLAGH,
Highland Investment Co., Ltd.

(Sgd) J. C. BALLAGH,
President.

Plaintiff's Exhibit No. 1—(Continued)

Los Angeles, California

February 14, 1939.

To the Board of Directors of
Patterson-Ballagh Corporation

I, H. W. Elliott, do hereby tender my resignation as a director of Patterson-Ballagh Corporation to take effect immediately.

(Sgd) H. W. ELLIOTT.

MINUTES OF SPECIAL MEETING
OF BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A special meeting of the Board of Directors of Patterson-Ballagh Corporation was held on the 27th day of June, 1939, at 1900 East 65th Street, Los Angeles, California, at the hour of 2:00 o'clock P. M. of said day, pursuant to notice duly and regularly given to each of the Directors in accordance with the By-Laws of the corporation.

Directors Present:

H. C. Armington

J. C. Ballagh

E. S. Dulin

D. G. Miller

Directors Absent:

H. W. Elliott

Also Present:

Howard Burrell

Plaintiff's Exhibit No. 1—(Continued)

Certificate of Notice

The President called the meeting to order and presided thereover. The Secretary presented his certificate to the effect that due and regular notice of the meeting had been given to each of the Directors, in accordance with the By-Laws of the corporation, and it was ordered that the same be placed in the minute book immediately following the minutes of this meeting.

Reading of Minutes

The next order of business was the consideration of the minutes of the special meeting of the Board of Directors held on the 15th day of February, 1939. The Secretary presented said minutes and Director Dulin stated that the same should be changed to indicate that the communication dated February 15, 1939, from C. L. Patterson to the corporation was delivered to and left with the Directors, instead of being presented and read.

Thereupon, on motion of Director Dulin, seconded by Director Ballagh and unanimously carried, it was

Resolved, that the minutes of the special meeting of the Board of Directors of this corporation held on the 15th day of February, 1939, shall be and the same are hereby approved as as modified by the changing thereof to indicate that C. L. Patterson delivered to and left with the Directors his communication to the corporation of said date.

Plaintiff's Exhibit No. 1—(Continued)

Communication from C. L. Patterson

The communication dated February 15, 1939, from C. L. Patterson to the corporation in respect to the option agreement executed between him and De Mont G. Miller, covering the sale and purchase of the shares of capital stock held by C. L. Patterson was then read to the meeting and it was ordered that the same be placed in the minute book of the corporation immediately following the minutes of this meeting.

Resignation of H. W. Elliott

There was then presented to the meeting the resignation of H. W. Elliott as a Director of the corporation, which was dated February 14, 1939, and by its terms was to take effect immediately. The resignation was as follows:

“Los Angeles, California

February 14, 1939

To the Board of Directors of
Patterson-Ballagh Corporation

I, H. W. Elliott, do hereby tender my resignation as a director of Patterson-Ballagh Corporation to take effect immediately.

H. W. ELLIOTT”

Thereupon, on motion of Director Ballagh, seconded by Director Armington and unanimously carried, it was

Resolved, that the resignation of H. W. Elliott as a Director of this corporation, presented at this meeting, shall be and the same is hereby accepted with regret.

Plaintiff's Exhibit No. 1—(Continued)

Election of Howard Burrell

The meeting then proceeded with the matter of electing a Director to fill the vacancy created by the resignation of H. W. Elliott as such, and Director Ballagh placed the name of Howard Burrell in nomination.

There being no further nominations, on motion of Director Ballagh, seconded by Director Dulin and unanimously carried, it was

Resolved, that Howard Burrell shall be and he is hereby elected and appointed as a Director of this corporation to fill the vacancy created by the resignation of H. W. Elliott as such, to be effective immediately.

Communication from President

The President then read to the meeting a letter covering the situation in respect to the alleged obligation of the company to pay royalties to Byron Jackson Co. on protectors manufactured and sold by it. At the conclusion of the presentation of said letter he read to the meeting a letter from Musick and Burrell dated June 23, 1939, containing an opinion to the effect that from the data submitted to said firm it was of the opinion that the company could legally renounce and terminate the agreement dated September 20, 1928, executed with Byron Jackson Pump Company, on the grounds of the invalidity of the Bettis and Hopkins patents mentioned therein. A discussion of the problem followed and it was ordered that the communication from the President to the Board of Directors and

Plaintiff's Exhibit No. 1—(Continued)

the letter to the company from Musick and Burrell be placed in the minute book immediately following the minutes of this meeting.

At the conclusion of said discussion, on motion of Director Burrell, seconded by Director Armington and carried, Director Dulin voting in the negative, the following resolution was adopted:

Resolved, that the President of this corporation shall be and he is hereby authorized at such time as he may deem advisable to renounce and terminate the agreement dated September 20, 1928, executed by and between Byron Jackson Pump Co., a corporation, as Licensor, and this company, as Licensee, and such other agreements as may be supplemental thereto or connected therewith, and in connection with said renunciation and termination to do and perform such things and take such action as he may consider necessary or proper and to the best interests of this corporation;

Further Resolved, that the President of this corporation shall be and he is hereby instructed to report to this Board such action as he has taken from time to time pursuant to the authority given in the foregoing resolution.

General Problems

The meeting then proceeded with a discussion of the general business problems of the company and its financial statement showing its condition as at May 31, 1939, and the result of its operations during the first six months of the current fiscal year. A dis-

Plaintiff's Exhibit No. 1—(Continued)

discussion also was had on the subject of the amount of business done by the company with other items than protectors and the statement was made that approximately 20% of the gross volume of the business was derived from the handling of such other items.

Adjournment

There being no further business, on motion, duly seconded and unanimously carried, the meeting was adjourned.

(Sgd) J. C. BALLAGH,
Secretary.

Approved:

(Sgd) D. G. MILLER,
President.

Los Angeles, California.

June 27, 1939.

Board of Directors

Patterson-Ballagh Corporation

Los Angeles, California

Gentlemen:

Since assuming office as President of Patterson-Ballagh Corporation I have taken upon myself the duty of studying the various costs in connection with the conduct of this business. I find that for the first six months of 1939 the corporation will show a loss of some \$2,000.00. In this study of the various costs I noted the fact that the payment to Byron Jackson Company of royalties under the license agreement was a very substantial sum, and much more than

Plaintiff's Exhibit No. 1—(Continued)

made up the difference between profit and loss to the corporation.

A study of the situation shows that the Bettis patent has been invalidated, and we are no longer operating thereunder. We have, however, been paying royalties to Byron Jackson Company on the protectors, although we have not had any protection or benefit which would flow from a patent. Substantially all of our competitors on the other hand are not under the burden of paying royalties. The payment of these royalties on an unpatented product has been an important factor in the sale of protectors, particularly in the export trade. As stated, these royalty payments mean the difference between operating at a profit or a loss, and it may ultimately drive us out of the export trade.

The facts show that our sales of Patterson-Balgh protectors to be used in connection with the so-called Hopkins cushion joint have been so small as not to warrant the time and expense involved, and because it has been assumed that the payment of royalties on the unpatented protectors is tied into the license agreement, the result has been a continuous loss.

Because of all this, I asked the firm of Musick and Burrell to make a study of the situation to see if there was not some means by which payment under this agreement could be eliminated. They made an analysis of the situation and prepared a memorandum which is being presented at this meeting. As a result of this analysis and this memorandum, I

Plaintiff's Exhibit No. 1—(Continued)

asked the Secretary to send out notice calling a meeting of the Board of Directors in order to consider this matter at greater length.

Very truly yours,

(Sgd) D. G. MILLER.

(On letterhead of:)

Law Offices

MUSICK AND BURRELL

(Received Stamp:) Jun. 26, 1939 Received

1175 Subway Terminal Building,
Los Angeles, California.

June 23, 1939.

Patterson-Ballagh Corporation

1900 East 65th Street

Los Angeles, California

Attention: Mr. D. G. Miller

Dear Sirs:

At your request we have examined and considered the several agreements between your corporation and Byron Jackson Pump Company, and its successor Byron Jackson Company. We find it necessary to mention only the following agreements:

1. Agreement dated September 20, 1928, whereby Byron Jackson Pump Company purports to grant to your corporation the exclusive right to manufacture and sell the cushion joint claimed to be covered by Hopkins patent No. 1,619,728 upon payment of the royalties as therein provided.

2. Agreement dated September 20, 1928, where-

Plaintiff's Exhibit No. 1—(Continued)

by your corporation purports to grant to Byron Jackson Pump Company an exclusive paid-up license to make and sell and to grant licenses to others to make and sell the parts of the Hopkins device made of steel or other metals.

3. The form of licenses to others signed by Patterson-Ballagh Corporation and Byron Jackson Company, therein "styled the Licensors," and in each instance the named licensee. This agreement among other things provides that Patterson-Ballagh Corporation agrees to sell to the licensee and the licensee agrees to buy from your corporation only the rubbers therein called "Patterson-Ballagh Protectors."

This agreement is

also a license by Byron Jackson Company granting to the licensee the non-exclusive right to make and sell cushion joints for rotary drill pipes described and claimed in said Hopkins patent, subject to the agreement that the rubbers used therein must be bought from Patterson-Ballagh Corporation. No part of the royalty therein reserved is payable to your corporation. No special mention need be made of the other provisions of this agreement.

From our examination of the agreements specified above, as well as the other agreements called to our attention, it is our opinion that your corporation has the right to renounce and terminate, and should give notice to Byron Jackson Company of renunciation and termination of, the agreement of September 20, 1928, first above mentioned and all rights thereunder.

Plaintiff's Exhibit No. 1—(Continued)

You will also by notice release Byron Jackson Company from all obligation to purchase rubbers and cushions described in and as provided by the second agreement mentioned above. The notice must similarly refer to the Letter Agreement of December 22, 1931, signed by Byron Jackson Company and approved December 29, 1931, by Patterson-Ballagh Corporation, J. C. Ballagh and C. L. Patterson. Any licensee under the third agreement mentioned above should be notified by you of the fact of said renunciation, and should be further notified that he is released from all obligation to purchase the rubber rings exclusively from you. After notice of renunciation your corporation should make no further payment of the royalties specified in the agreement first above mentioned. You should pay or tender to pay all royalties accrued to the date of service of notice of renunciation. It is our opinion that after notice of said renunciation, your corporation may freely manufacture and sell the Bettis protector, or any other protector, without payment of royalty, and that this is true also of the rubber rings used as a part of the Hopkins device, although as to the latter you will be called upon in any litigation to establish the invalidity of the Hopkins patent. We will be pleased to furnish you the form of the notices required to be served.

Very truly yours,

MUSICK AND BURRELL,

(Sgd) By HOWARD BURRELL.

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF SPECIAL MEETING
OF BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A special meeting of the Board of Directors of Patterson-Ballagh Corporation was held on the 22nd day of August, 1939, at 1900 East 65th Street, Los Angeles, California, at the hour of 11:00 o'clock A. M. of said day, pursuant to notice duly and regularly given to each of the Directors in accordance with the By-Laws of the corporation.

Directors Present:

H. C. Armington

J. C. Ballagh

D. G. Miller

Directors Absent:

Howard Burrell

E. S. Dulin

Affidavit of Notice

The President called the meeting to order and presided thereover. The Secretary presented his affidavit to the effect that due and regular notice of the meeting had been given to each of the Directors in accordance with the By-Laws of the corporation, and it was ordered that the same be placed in the minute book immediately following the minutes of this meeting.

Approval of Minutes

The next order of business was a consideration

Plaintiff's Exhibit No. 1—(Continued)

of the minutes of the special meeting of the Board of Directors held on the 27th day of June, 1939. The Secretary presented said minutes and there being no errors or omissions noted therein the same were approved as read.

Report of President

The President reported that immediately following the special meeting of the Board of Directors held on the 27th day of June, 1939, he had caused notices to be sent to Byron Jackson Co., J. C. Ballagh and C. L. Patterson advising of the renunciation and termination by the company of the agreement dated September 20, 1928, executed between Byron Jackson Pump Co., as licensor, and this company, as licensee. It was also reported that the company was in receipt of a communication from Byron Jackson Co., advising that said corporation did not acquiesce in and refused to accept the renunciation and termination of said agreement. It was the consensus of the opinion of the Directors present that the action of the President taken pursuant to the resolutions of the Board of Directors in respect to the renunciation and termination of the Byron Jackson Co. license agreement was proper and satisfactory.

Compensation of Secretary and Treasurer

The meeting then proceeded with a discussion of the amount of compensation being paid by the company to J. C. Ballagh as its Secretary and Treasurer, and the recommendation was made that

Plaintiff's Exhibit No. 1—(Continued)

his salary as such officer be increased to the extent of \$4,000.00 per year as of March 1, 1939, on a basis whereby said increase would be paid in four equal quarterly installments commencing on June 1, 1939, and continuing until further order of the Board.

Thereupon, on motion of Director Armington, seconded by Director Miller and carried, Director Ballagh not voting thereon, it was

Resolved, that commencing as of March 1, 1939, the compensation being paid by this corporation to J. C. Ballagh as its Secretary and Treasurer shall be and the same is hereby increased to the extent of \$4,000.00 per year on a basis whereby such increase shall be paid in equal quarterly installments of \$1,000.00 each, commencing on June 1, 1939, and continuing until further action of this Board.

Adjournment

There being no further business to come before the meeting, on motion, duly seconded and unanimously carried, the same was adjourned.

(Sgd) J. C. BALLAGH
Secretary

Approved:
(Sgd) D. G. MILLER
President

Plaintiff's Exhibit No. 1—(Continued)

AFFIDAVIT OF MAILING NOTICE OF
SPECIAL MEETING OF BOARD OF
DIRECTORS

State of California

County of Los Angeles—ss.

J. C. Ballagh, being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting Secretary of Patterson-Ballagh Corporation, a California corporation; that on the 18th day of August, 1939, he served copies of the following notice of a special meeting of the Board of Directors of said corporation upon each and every director by depositing in the United States mail, in a securely fastened, prepaid wrapper a true copy thereof, addressed to such Director of said corporation at his respective last known post office address as the same appears on the books and records of the corporation.

(Sgd) J. C. BALLAGH

Subscribed and sworn to before me this 18 day of August, 1939.

[Notarial Seal] (Sgd) MAY G. NOLAN

Notary Public in and for the County of Los Angeles, State of California.

“Los Angeles, Calif.

August 18, 1939

“A special meeting of the Board of Directors of Patterson-Ballagh Corporation will be held on

Plaintiff's Exhibit No. 1—(Continued)

Tuesday, August 22, 1939, at 11:00 o'clock a. m.
at the office of the corporation, 1900 East 65th
Street, Los Angeles, California.

Very truly yours,

J. C. BALLAGH

J. C. Ballagh

Secretary''

MINUTES OF ANNUAL MEETING OF
SHAREHOLDERS OF
PATTERSON-BALLAGH CORPORATION

The Annual Meeting of the Shareholders of Patterson-Ballagh Corporation, a California corporation, was held at the office and principal place of business of the company, located at 1900 East 65th Street, Los Angeles, California, on the 16th day of January, 1940, at the hour of 8:30 o'clock a.m., pursuant to notice issued.

Mr. D. G. Miller, President of the Corporation, presided at the meeting, and Mr. J. C. Ballagh, Secretary of the Corporation, acted as Secretary.

The Secretary presented and read the notice of the meeting, and it was ordered that a copy of same be placed in the minute book immediately following the minutes of this meeting.

The Secretary presented an affidavit, duly signed and sworn to by himself, showing that notice of the meeting had been mailed to each shareholder, addressed to such shareholder at the address given

Plaintiff's Exhibit No. 1—(Continued)

by him to the Corporation, postage prepaid. The affidavit was approved and ordered attached to these minutes.

The Secretary read the roll of the shareholders entitled to vote at the meeting, as follows:

Name	No. of Shares
Ballagh, J. C.	125
Byron Jackson Co., (a corporation) by E. S. Dulin, Pres.	249
Dulin, E. S.	1
Highland Investment Corp., Ltd. by J. C. Ballagh, Pres.	250
Miller, D. G. (voting stock of C. L. Patterson)	375
	<hr/>
Total Capital Stock	1,000

Upon a call of the list it was found that there were present in person shareholders of the Corporation holding 750 shares of stock, as follows:

Name	No. of Shares
Ballagh, J. C.	125
Highland Investment Corp., Ltd. by J. C. Ballagh, Pres.	250
Miller, D. G. (voting stock of C. L. Patterson)	375
	<hr/>
Total	750

The Secretary reported that the above number of shares represented more than a majority of the total number of shares outstanding and entitled to vote.

The Secretary then presented the minutes of the Annual Meeting of Shareholders held on January 27, 1939, which were read and approved.

Plaintiff's Exhibit No. 1—(Continued)

The financial report of the Corporation for the period ending November 30, 1939, as prepared under the direction of the Secretary-Treasurer, was presented and unanimously approved, and a summary of same was ordered attached hereto and made a part of the minutes of this meeting.

Upon motion duly made and seconded, it was unanimously

Resolved, That the acts of Directors and Officers during the period since the last meeting of Shareholders be, and the same hereby are, fully ratified, approved, and confirmed.

The meeting then proceeded to the election of a Board of Directors for the ensuing year.

Upon motion duly made and seconded it was unanimously

Resolved, That the present Directors be re-elected for the ensuing year, or until their successors are chosen and elected, which act can only be accomplished by the majority approval of the Shareholders.

No other business having come before the meeting, it was, on motion duly made and seconded, adjourned.

(Sgd)

D. G. MILLER

President

(Sgd)

J. C. BALLAGH

Secretary

Plaintiff's Exhibit No. 1—(Continued)

PATTERSON-BALLAGH CORPORATION

Secretary's Report of 1939 Operations to November 30, 1939

INCOME and PROFIT and LOSS

Gross Sales	\$296,096.58
Cost of Goods Sold	\$79,074.97
Royalties	13,181.33
	92,256.30
Gross Profit from Manufacturing	203,840.28
Operating Expenses	167,929.14
Net Income from Operations	35,911.14
Other Expenses—Less Other Income.....	11,563.22
Net Gain for period, before Income Tax Deduction	24,347.92
Less Estimated Federal & State Taxes.....	3,967.09
	20,380.83

Summary of Surplus

Balance as per Ledger November 30, 1938.....	\$126,947.30
1939 Credits:	
Net Profit from Operations (before Federal & State Tax)	24,347.92
	151,295.22
1939 Charges:	
Federal Income Tax 1938	5,887.99
Dividends	5,887.99
Total Earned Surplus at 11/30/39	145,407.23
Appreciated Surplus	1,611.86
Balance Surplus as per Ledger 11/30/39.....	147,019.09
Less Estimated Taxes for 1939	
Est. Federal Income Tax 1939.....	3,420.67
Est. State Franchise Tax & Income	546.42
	3,967.09
Surplus Balance after Estimated Taxes.....	143,052.00
Note: Estimated Federal Income Tax	3,420.67
Est. State Franchise & Income Tax	546.42
Total	3,967.09 for 1939 operations, payable during 1940. 1938 tax of \$5,887.99 has been

Plaintiff's Exhibit No. 1—(Continued)

deducted to show surplus of \$147,019.09, as shown on our books.

Item of \$3,420.67 is chargeable against surplus in 1940, while item of \$546.42 is chargeable against 1940 Profit and Loss.

For this reason Net Profit from Operations is shown before tax.

I, J. C. Ballagh, as Secretary-Treasurer of Patterson-Ballagh Corporation, hereby certify that the foregoing report is true, to the best of my knowledge and belief.

(Sgd)

J. C. BALLAGH

J. C. Ballagh, Secretary-Treasurer

NOTICE OF ANNUAL MEETING OF
SHAREHOLDERS OF
PATTERSON-BALLAGH CORPORATION

Notice Is Hereby Given That the Annual Meeting of the Shareholders of Patterson-Ballagh Corporation, a California Corporation, Will Be Held on Tuesday, the 16th Day of January, 1940, at 8:30 o'clock A.M., at 1900 East 65th St., in the City of Los Angeles, County of Los Angeles, State of California, for the Following Purposes:

1.—To Receive and Consider a Report Covering the Business Activities of the Corporation During the Year Ending November 30, 1939.

2.—To Elect a Board of Directors to Serve Until the Next Annual Meeting of Shareholders.

3.—To Consider and Act Upon the Matter of Ratifying All Actions Taken by the Officers and Directors During the Period Since the Last Meeting of the Shareholders.

Plaintiff's Exhibit No. 1—(Continued)

4.—To Transact Such Other Business as May Properly Come Before the Meeting.

Dated this 5th day of January, 1940.

(Sgd) J. C. BALLAGH

J. C. Ballagh

Secretary

AFFIDAVIT OF MAILING NOTICE OF
ANNUAL MEETING OF SHAREHOLDERS

State of California

County of Los Angeles—ss.

J. C. Ballagh, being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting Secretary of Patterson-Ballagh Corporation, a California corporation; that on the 5th day of January, 1940, he served copies of notice of Annual Meeting of Shareholders of said corporation upon each and every shareholder by depositing in the United States mail, in a securely fastened, prepaid wrapper a true copy thereof, addressed to such shareholders of said corporation at their last known post office address as the same appears on the books and records of the corporation.

(Sgd) J. C. BALLAGH

Subscribed and sworn to before me this 5th day of January, 1940.

(Sgd) MAY G. NOLAN,

Notary Public in and for the County of Los Angeles,
State of California.

Plaintiff's Exhibit No. 1—(Continued)

Los Angeles, California

January 5, 1940

The Annual Meeting of the Board of Directors of Patterson-Ballagh Corporation will be held on Tuesday, January 16, 1940, immediately following the Annual Meeting of Shareholders at 8:30 o'clock a.m., at the office of the corporation, 1900 East 65th Street, Los Angeles, California.

(Sgd)

J. C. BALLAGH

J. C. Ballagh

Secretary

MINUTES OF ANNUAL MEETING OF
DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

The annual meeting of the directors of Patterson-Ballagh Corporation was held at the office and principal place of business of the company, 1900 East 65th Street, Los Angeles, California, on the 16th day of January, 1940, immediately following the annual meeting of the shareholders.

Present:

J. C. Ballagh

D. G. Miller

H. C. Armington

Absent:

E. S. Dulin

Howard Burrell

Plaintiff's Exhibit No. 1—(Continued)

Mr. D. G. Miller, President of the Corporation, presided, and Mr. J. C. Ballagh acted as Secretary of the meeting.

The Secretary presented the notice of the meeting pursuant to which the meeting was held, which was approved and ordered attached to these minutes.

The Secretary then presented the minutes of the meeting of the Board of Directors held on August 22, 1939, which were read and approved.

The first business to come before the meeting was the election of officers for the ensuing year, and the following persons were nominated for the ensuing year for the respective offices, to-wit:

D. G. Miller, President

J. C. Ballagh, Secretary-Treasurer

M. G. Nolan, Asst. do

There being no further nominations, and the nominations of the above named persons being duly seconded, a vote was had and the Secretary declared the said persons unanimously elected for the said respective offices for the ensuing year.

Each of the officers so elected was present and thereupon accepted the office to which he was elected.

There being no further business to come before the meeting, the same was, upon motion, adjourned.

(Sgd) D. G. MILLER
President

(Sgd) J. C. BALLAGH
Secretary

Plaintiff's Exhibit No. 1—(Continued)

MINUTES OF SPECIAL MEETING
OF BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A special meeting of the Board of Directors of Patterson-Ballagh Corporation was held on the 18th day of March, 1940, at 1900 East 65th Street, Los Angeles, California, at the hour of 11:00 o'clock A. M. of said day, pursuant to notice duly and regularly given by the Secretary to each of the Directors, in accordance with the requirements of the By-Laws of the corporation.

Directors Present:

J. C. Ballagh
Howard Burrell
E. S. Dulin
D. G. Miller

Directors Absent:

H. C. Armington

Certificate of Secretary

The President called the meeting to order and presided thereover. The Secretary presented a certificate to the effect that due and regular notice of the meeting had been given to each of the Directors in accordance with the requirements of the By-Laws of the corporation. It was directed that the certificate be placed in the minute book immediately following the minutes of this meeting.

Plaintiff's Exhibit No. 1—(Continued)

Reading and Approval of Minutes

It was stated that the next order of business was the consideration of the minutes of the organization meeting of the Board of Directors held on the 16th day of January, 1940, immediately after the adjournment of the annual meeting of shareholders. The Secretary then presented the minutes of said meeting.

Thereupon, on motion of Director Dulin, seconded by Director Burrell and unanimously carried, it was

Resolved, that the minutes of the organization meeting of the Board of Directors of this corporation held on the 16th day of January, 1940, shall be and the same are hereby approved as read.

Report of President

The President then presented a general report on the condition of the business and affairs of the corporation and the same indicated that the volume of business being enjoyed was considerably in excess of that experienced during the same period of the previous year and that earnings were expanding by reason thereof. He also reviewed certain economies that had been placed in effect in the offices of the corporation and advised the Directors of certain improvements being made in the plant, consisting of the renovation of the men's dressing room, the installation of a new lathe, presses, and certain other equipment. A general

Plaintiff's Exhibit No. 1—(Continued)

discussion of the report followed and the Directors expressed themselves as being gratified with the current condition of the business and affairs of the corporation.

Compensation of President

The meeting then proceeded with a discussion of the subject of increasing the compensation of the President to the extent of \$500.00 a month, commencing as of the 1st day of March, 1940, at the suggestion of Director Ballagh. It was pointed out that under the administration of the President a number of economies had been effected and that the affairs of the corporation were being so operated as to materially enhance the net profit being derived from its activities, and further that the amount of earnings currently being experienced were more than sufficient to justify said increase. Director Dulin stated that he had no objection to making an increase in the compensation being paid to the President but expressed himself as feeling that the same should not be made for any definite period and with the understanding that it should not remain in effect beyond any reversal in the current trend of favorable business conditions.

Thereupon, on motion, duly seconded and carried, Director Miller not voting thereon, it was

Resolved, that the compensation being paid by this corporation to De Mont G. Miller, its President, for his services as such, shall be

Plaintiff's Exhibit No. 1—(Continued)

and the same is hereby increased as of March 1, 1940, from the sum of \$1,000.00 per month to the sum of \$1,500.00 per month, to continue until further action of this Board of Directors and with the understanding that the same may be decreased in the event of the appearance of a reversal in the current trend of favorable business conditions.

Compensation of Secretary-Treasurer

The President then suggested that the Directors consider the amount of compensation being paid by the corporation to Director Ballagh, as the Secretary-Treasurer thereof, and pointed out that his services in addition to those of said office also include those of a sales manager, in view of the fact that Director Ballagh was and had been for many years in complete charge of all sales activities of the corporation. The statement was made that during the last few months there had been sharp increase in the volume of sales and that the efforts devoted to the business of the corporation by Director Ballagh had been showing very satisfactory results. The suggestion was made that the monthly compensation being paid Director Ballagh be increased to the extent of \$1,000.00 a month and that the quarterly compensation being paid to him remain the same. Director Dulin stated that he objected most strenuously to the suggested increase and expressed himself as feeling that the same was entirely unwarranted and should not be put into

Plaintiff's Exhibit No. 1—(Continued)

effect under any conditions until the corporation was paying satisfactory dividends to its shareholders.

Thereupon, on motion of Director Miller, seconded by Director Burrell and carried, Director Dulin voting in the negative and Director Ballagh not voting thereon, it was

Resolved, that the monthly compensation being paid by this corporation to J. C. Ballagh, its Secretary and Treasurer, for his services as such and in the supervision of the sales activities of this corporation, shall be and the same is hereby increased as of March 1, 1940, from the sum of \$1,000.00 per month to the sum of \$2,000.00 per month, to continue until further action of this Board of Directors and with the understanding that the same may be decreased in the event of the appearance of a reversal in the current trend of favorable business conditions;

Further Resolved, that the quarterly compensation being paid by this corporation to J. C. Ballagh, its Secretary and Treasurer, for his services as such and in the supervision of the sales activities of this corporation in the amount of \$1,000.00 a quarter shall remain the same and shall not be deemed to have been changed or modified by the foregoing resolution.

Discussion of Dividend

There followed a discussion of the advisability of declaring and distributing a dividend on the

Plaintiff's Exhibit No. 1—(Continued)

outstanding shares of the capital stock of the corporation at this time and the suggestion was made that no such action should be taken until the amount of the earnings for the current year were more ascertainable and a clearer conclusion as to the effect of the international situation on the business of the corporation could be obtained. Director Dulin expressed himself as feeling that serious consideration should be given the matter of declaring a dividend at this time, but the concensus of opinion of the Directors was that the subject should be held in abeyance until later in the fiscal year.

Adjournment

There being no further business to come before the meeting, on motion, duly seconded and unanimously carried, the meeting was adjourned.

(Sgd) J. C. BALLAGH
Secretary

Approved:

(Sgd) D. G. MILLER
President

CERTIFICATE OF MAILING NOTICE
OF SPECIAL MEETING OF THE
BOARD OF DIRECTORS

J. C. Ballagh hereby certifies that he is the duly elected, qualified and acting Secretary of Patterson-Ballagh Corporation, a California corporation, and that on the 12th day of March, 1940, he served the

Plaintiff's Exhibit No. 1—(Continued)

following notice of a meeting of the Board of Directors of Patterson-Ballagh Corporation upon each and every Director of said corporation by depositing in the United States mail, in a securely fastened, prepaid wrapper, a true copy thereof, addressed to each and every Director of said corporation at their respective last known post office addresses as the same appear on the books of the corporation.

(Sgd)

J. C. BALLAGH

"Los Angeles, California

March 12, 1940

"A special meeting of the Board of Directors of Patterson-Ballagh Corporation will be held on Monday, March 18, 1940, at 11:00 o'clock a. m. at the office of the corporation, 1900 East 65th Street, Los Angeles, California.

Very truly yours,

J. C. BALLAGH

J. C. Ballagh, Secretary"

MINUTES OF SPECIAL MEETING
OF BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

A special meeting of the Board of Directors of Patterson-Ballagh Corporation was held on the 29th day of November, 1940, at 1900 East 65th Street, Los Angeles, California, at the hour of 9:00

Plaintiff's Exhibit No. 1—(Continued)

o'clock A. M. of said day, pursuant to notice duly and regularly given to each of the Directors in accordance with the requirements of the By-Laws of the corporation.

Directors Present:

H. C. Armington

J. C. Ballagh

Howard Burrell

D. G. Miller

Directors Absent:

E. S. Dulin

Certificate of Secretary

The President called the meeting to order and presided thereover. The Secretary presented a certificate to the effect that due and regular notice of the meeting had been given to each of the Directors in accordance with the By-Laws of the corporation. It was directed that the certificate be placed in the minute book immediately following the minutes of this meeting.

Absence of Director Dulin

The Secretary reported that he had been advised by Director Dulin that he would be unable to attend the meeting and that he hoped the same would be adjourned until the following week so that he could be in attendance. It was pointed out to the Directors that there were certain matters which should be completed before the end of the current fiscal year of the company on November 30, 1940, and it

Plaintiff's Exhibit No. 1—(Continued)

was agreed that only such matters would receive attention and that all other matters for consideration would be placed before the Board at an adjourned meeting when Director Dulin could be in attendance.

Reading and Approval of Minutes

The Directors then proceeded with the consideration of the minutes of the special meeting of the Board of Directors held on the 18th day of March, 1940, and the Secretary presented and read said minutes to the meeting.

Thereupon, on motion of Director Armington, seconded by Director Burrell and unanimously carried, it was

Resolved, that the minutes of the special meeting of the Board of Directors of this corporation held on the 18th day of March, 1940, shall be and the same are hereby approved as read.

Bonus to Regular Employees

The President then suggested that the Directors consider the matter of the giving of a year-end bonus to the regular employees of the company, as had been the custom in the past. He stated that by the term "regular employees" he did not include R. A. McWaid, H. C. Armington, J. N. O'Melveny, J. C. Ballagh and himself, who were engaged in executive activity, and reported that it was his opinion that the year-end bonus to the regular employees should be in an amount equivalent to one-twelfth of

Plaintiff's Exhibit No. 1—(Continued)

the annual compensation actually received by them, less compensation received on account of over time. The Directors then discussed the suggested bonus and it was the consensus of their opinion that the same should be paid immediately and before the end of the current fiscal year.

Thereupon, on motion of Director Ballagh, seconded by Director Armington and unanimously carried, it was

Resolved, that the proper officers of this corporation shall be and they are hereby authorized and directed to pay and deliver to its regular employees, other than R. A. McWaid, H. C. Armington, J. N. O'Melveny, J. C. Ballagh and D. G. Miller, immediately and prior to the end of the current fiscal year a year-end bonus to each thereof equivalent to one-twelfth of the compensation actually paid or to be paid by this corporation to each employee during the current fiscal year, less compensation received on account of over time, as a token of the appreciation of this corporation of the loyalty and services of its employees.

Year-End Bonus of R. A. McWaid and J. N. O'Melveny

The Directors then considered the matter of the payment of a year-end bonus to R. A. McWaid and J. N. O'Melveny, and the suggestion was made that such bonus should be in an amount equivalent to one-sixth of the compensation actually received and

Plaintiff's Exhibit No. 1—(Continued)

to be received by said persons from the company during the current fiscal year.

Thereupon, on motion of Director Armington, seconded by Director Burrell and unanimously carried, it was

Resolved, that the proper officers of this corporation shall be and they are hereby authorized and directed to pay and deliver to R. A. McWaid and J. N. O'Melveny immediately and prior to the end of the current fiscal year a year-end bonus to each thereof equivalent to one-sixth of the compensation actually paid or to be paid by this corporation to him during the current fiscal year, as a token of the appreciation of this corporation of his loyalty and service.

Additional Compensation to H. C. Armington

The Directors then proceeded with a consideration of the matter of the company paying H. C. Armington, a Director, additional compensation for his services rendered to it during the current fiscal year, and the President suggested that he be paid as such additional compensation an amount equivalent to one-sixth of the compensation actually received and to be received by him from the company during the current fiscal year. A discussion of the matter followed and the Directors expressed themselves as feeling that such an amount of additional compensation should be paid.

Thereupon, on motion, duly seconded and carried, Director Armington not voting thereon, it was

Resolved, that the proper officers of this cor-

Plaintiff's Exhibit No. 1—(Continued)

poration shall be and they are hereby authorized and directed to pay to H. C. Armington as additional compensation for his services rendered to the company during the fiscal year ending on November 30, 1940, a sum equivalent to one-sixth of his regular compensation paid or payable to him by this corporation for his services during the current fiscal year.

Additional Compensation to J. C. Ballagh

The President then suggested that the Directors consider the payment of additional compensation for the current fiscal year to Director Ballagh, and pointed out that he had been serving as the Secretary and Treasurer as well as the Sales Manager of the company and that due to his efforts the company had been enjoying an exceptionally fine volume of business and that its earnings were being materially increased, with excellent prospects for a further increase during the next fiscal year. Director Armington suggested that Director Ballagh be paid additional compensation for his services during the current fiscal year in an amount equivalent to one-sixth of his regular compensation paid or payable to him by the company for said year.

Thereupon, on motion of Director Armington, seconded by Director Burrell and carried, Director Ballagh not voting thereon, it was

Resolved, that the proper officers of this corporation shall be and they are hereby authorized and directed to pay to J. C. Ballagh as additional compensation for his services ren-

Plaintiff's Exhibit No. 1—(Continued)

dered to the company during the fiscal year ending on November 30, 1940, a sum equivalent to one-sixth of his regular compensation paid or payable to him by this corporation for his services during the current fiscal year.

Additional Compensation to D. G. Miller

The subject of paying additional compensation to Director Miller, the President of the corporation, was then brought up for discussion and the extent and value of his services rendered during the current fiscal year were reviewed in detail. After a consideration of said services the suggestion was made that he should be additionally compensated by the company therefor to the same extent as other executives in that his services were of a comparable value.

Thereupon, on motion of Director Ballagh, seconded by Director Armington and carried, Director Miller not voting thereon, it was

Resolved, that the proper officers of this corporation shall be and they are hereby authorized and directed to pay to D. G. Miller as additional compensation for his services rendered to the company during the fiscal year ending on November 30, 1940, a sum equivalent to one-sixth of his regular compensation paid or payable to him by this corporation for his services during the current fiscal year.

Adjournment

At this point the Directors agreed that there were

Plaintiff's Exhibit No. 1—(Continued)

"Los Angeles, Calif.

November 25, 1940

Dear Sir:

A special meeting of the Board of Directors of Patterson-Ballagh Corporation will be held on Friday, November 29, 1940, at 9:00 a.m. at the office of the corporation, 1900 East 65th Street, Los Angeles, California.

Very truly yours,

J. C. BALLAGH

J. O. Ballagh, Secretary"

MINUTES OF ADJOURNED MEETING OF
BOARD OF DIRECTORS OF PATTER-
SON-BALLAGH CORPORATION

An adjourned meeting of the Board of Directors of Patterson-Ballagh Corporation was held on the 3rd day of December, 1940, at 1900 East 65th Street, Los Angeles, California, at the hour of 9:00 o'clock A. M. of said day, pursuant to a resolution duly and regularly adopted by the Board of Directors at a special meeting held on the 29th day of November, 1940.

Directors Present:

H. C. Armington

J. C. Ballagh

Howard Burrell

E. S. Dulin

D. G. Miller

Directors Absent:

None

Plaintiff's Exhibit No. 1—(Continued)

The President called the meeting to order and presided thereover.

Financial Statement

There was presented to the meeting a statement prepared by the accounting department of the company containing a balance sheet indicating the financial condition at October 31, 1940, and an operating statement showing results of operations during the month of October and during the first eleven months of the fiscal year ending on November 30, 1940. The contents of the statement were discussed at length and no action was taken in respect thereto.

The suggestion was made that a reserve be maintained to cover contingent liabilities of the company, in respect to taxes and possible requirements for the payment of royalties on certain of its products, and it was the consensus of opinion of the Directors that this should be done.

Payment of Dividend

Director Dulin suggested that the Directors consider the matter of the declaration and payment of a dividend on the issued and outstanding shares of the capital stock of the company and stated that in view of the additional compensation being paid by the company to its officers and Directors, which he considered more than adequate, it appeared that the company was in a position to declare and pay a dividend to its shareholders. Directors Miller and Ballagh stated that they were of the opinion that

Plaintiff's Exhibit No. 1—(Continued)

no action should be taken in respect to dividends at this time in view of the cash requirements of the company under a proposal to be presented for the expansion of its plant facilities and in view of pending litigation involving the question as to the requirement of paying royalties on protectors manufactured and sold and the validity of the patents on its manual and hydraulic applicators. A further discussion of the matter of the declaration and payment of the dividend followed but no action was taken thereon.

Acquisition of Real Property and Improvement Thereof

The President then presented to the meeting a proposal contemplating the acquisition by the company of additional real property with improvements thereon consisting of an old residence, or residences, lying immediately south of the plant of the company, and upon the acquisition thereof to clear said property and erect thereon a warehouse or other buildings for the storage of carbon black, rubber and other supplies. He stated that in his opinion the property could be acquired and the proposed improvements placed thereon at a cost of not to exceed \$5,000.00 in amount.

There followed a discussion of the proposal and it was the thought of the Directors that said program should be followed and that the possibility of acquiring an additional fifty feet of property to

Plaintiff's Exhibit No. 1—(Continued)

that contained in the proposal of the President be explored and reported to the Directors at the next meeting.

Thereupon, on motion of Director Dulin, seconded by Director Burrell and unanimously carried, it was

Resolved, that the proper officers of this corporation shall be and they are hereby authorized to acquire for and on behalf of this corporation the real property located immediately south of its plant and described at this meeting and to erect thereon a warehouse or other buildings for the storage of carbon black, rubber and other supplies at a total cost of not to exceed \$5,000.00 in amount;

Further Resolved, that the proper officers of this corporation shall be and they are hereby authorized and directed to explore the possibility of the acquisition by this company of an additional fifty feet of property located south of the parcels hereinbefore authorized to be purchased and report thereon at the next meeting of the Board of Directors.

Expansion of Plant Facilities

There was then discussed generally by the Directors the suggestion of the President and Secretary that the company consider the advisability of improving its property across the street to the east of its plant by the erection of a building to house the present machine shop and such additional machine tools as might be acquired, and the acquisition

Plaintiff's Exhibit No. 1—(Continued)

of equipment to be placed therein for experimental work and development of new items to be manufactured and sold in the field of rubber and plastics as well as articles for use in the petroleum industry. The estimate was given that the proposed improvements would cost approximately \$15,000.00 in amount and that probably the sum of \$25,000.00 should be expended in new equipment, tools and laboratory. A general discussion followed but no action was taken in respect to the suggestion.

Investment of Funds

The President then offered the suggestion that the Directors consider the advisability of investing certain cash resources of the company in government securities so as to procure a higher return thereon than could be received from keeping the same in savings accounts. Directors Dulin and Burrell pointed out that in their opinion the return on government securities was now so low as not to justify the investment therein when the risk of depreciation in value was considered, and after a discussion of the subject it was decided that no action should be taken in respect thereto at this time.

"Idea-Dollar" Plan

The Secretary then presented a plan designated as "Idea-Dollar" plan for the making of awards to employees for suggestions in respect to the improvement of the operations of the company, the effecting of economies, and the development of its relations with its customers and the public. He

Plaintiff's Exhibit No. 1—(Continued)

handed the Directors for study a manual covering the details of the plan and reported that the cost of putting it into effect would probably be only nominal and not exceed the amount of \$1,000.00 per year. A general discussion of the plan followed and it was the concensus of opinion of the Directors that the plan should be put into effect as of December 1, 1940, and continued for a period of six months and then reviewed.

Thereupon, on motion of Director Dulin, seconded by Director Ballagh and unanimously carried, it was

Resolved, that the "Idea-Dollar" plan presented to this meeting by the Secretary shall be and the same is hereby adopted and put into effect as of December 1, 1940, for a period of six months and that the officers of this corporation shall be and they are hereby authorized to expend such funds of the corporation, not to exceed, however, \$500.00 in amount, as may be necessary to carry out said plan during said period.

Further Resolved, that at the expiration of six months the plan be reviewed and after a consideration of the results obtained thereunder further consideration be given to the matter of continuing it after the expiration of said period.

Adjournment

There being no further business to come before

Plaintiff's Exhibit No. 1—(Continued)

the meeting, on motion, duly seconded and unani-
mously carried, the meeting was adjourned.

(Sgd) J. C. BALLAGH
Secretary

Approved:

(Sgd) D. G. MILLER
President

CERTIFICATE OF MAILING NOTICE OF
SPECIAL MEETING OF THE BOARD OF
DIRECTORS

J. C. Ballagh hereby certifies that he is the duly elected, qualified and acting Secretary of Patterson-Ballagh Corporation, a California corporation, and that on the 25th day of November, 1940, he served the following notice of a meeting of the Board of Directors of Patterson-Ballagh Corporation upon each and every Director of said corporation by depositing in the United States mail, in a securely fastened, prepaid wrapper, a true copy thereof, addressed to each and every Director of said corporation at their respective last known post office addresses as the same appear on the books of the corporation.

(Sgd) J. C. BALLAGH

Plaintiff's Exhibit No. 1—(Continued)

“Los Angeles, California

November 25, 1940

“A special meeting of the Board of Directors of Patterson-Ballagh Corporation will be held on Friday, November 29, 1940, at 9:00 a. m. at the office of the corporation, 1900 East 65th Street, Los Angeles, California.

Very truly yours,

J. C. BALLAGH

J. C. Ballagh, Secretary”

MINUTES OF ANNUAL MEETING
OF SHAREHOLDERS OF
PATTERSON-BALLAGH CORPORATION

The annual meeting of shareholders of Patterson-Ballagh Corporation was held on Tuesday, the 21st day of January, 1941, at the hour of 8:30 o'clock A. M. of said day at the office and principal place of business of the corporation at 1900 East 65th Street, in the City of Los Angeles, County of Los Angeles, State of California, pursuant to notice of said meeting duly had and regularly given to all of the shareholders of record, in accordance with the By-Laws of the corporation.

The President called the meeting to order and presided thereover. He presented the affidavit of the Secretary to the effect that due and regular notice of the meeting had been given and it was di-

Plaintiff's Exhibit No. 1—(Continued)

rected that said affidavit be inserted in the minute book of the corporation immediately following the minutes of this meeting.

The President then requested the Secretary to call the roll and examine the proxies at hand to ascertain whether or not there were represented at the meeting in person or by proxy the holders of a majority of the subscribed, issued and outstanding shares of the capital stock of the corporation so as to constitute a quorum.

The Secretary called the roll and examined the proxies at hand and then reported the following shareholders present at the meeting:

Present in person:

Name of Shareholder	No. of Shares
J. C. Ballagh	125
E. S. Dulin	1

Present by Proxy:

Name of Shareholder	Name of Proxy	No. of Shares
Byron Jackson Co.	E. S. Dulin	249
Highland Investment Corp., Ltd.	J. C. Ballagh	250
C. L. Patterson	D. C. Miller	375

The President then declared that a total of 1,000 shares, being all of the subscribed, issued and outstanding capital stock of the corporation, were represented by the holders thereof being present in person or by proxy and that the meeting was therefore competent to proceed with the transaction of business.

Plaintiff's Exhibit No. 1—(Continued)

Reading and Approval of Minutes

It was announced that the next business before the meeting was a consideration of the minutes of the annual meeting of the shareholders held on the 16th day of January, 1940. The Secretary then presented the minutes of said meeting and there being no errors or omissions noted therein the same were approved as read.

Financial Statement

The President presented to the shareholders for consideration a tentative financial statement indicating the condition of the company at the close of its fiscal year on November 30, 1940, and the results of its operations during said fiscal year. The statement indicated that the company had earned approximately \$51,586.00 during the year before federal income and state franchise taxes. The shareholders were advised that an audit covering the activities of the company during said fiscal year was being made and that the same would be completed within a short time and then made available to all of the shareholders for study and consideration.

Nomination of Directors

The meeting then proceeded with the nomination of persons to serve as Directors during the ensuing year or until the election or appointment of their successors, and J. C. Ballagh placed the names

Plaintiff's Exhibit No. 1—(Continued)
of H. C. Armington, J. C. Ballagh, Howard Burrell, E. S. Dulin and D. G. Miller in nomination.

Election of Directors

There being no further nominations, on motion of J. C. Ballagh, seconded by E. S. Dulin and unanimously carried, it was

Resolved, that the nominations be closed and that the Secretary be instructed to cast a ballot on behalf of all shareholders present in person or by proxy for and in favor of the persons nominated as the Directors of this corporation.

The Secretary thereupon cast said ballot and announced that each of the five persons nominated had received 1,000 votes, and the President declared said nominees to be the duly elected Directors of the corporation for the ensuing year or until the election or appointment of their successors.

Ratification of Prior Acts of Officers and Directors

Thereupon, on motion of J. C. Ballagh, seconded by D. G. Miller and carried, E. S. Dulin voting in the negative, it was

Resolved, that all action taken by the Board of Directors of this corporation since the date of the last annual meeting of the shareholders, whether said Directors were defacto or de jure, and all action of the officers of this corporation done pursuant to the authorization of the Board of Directors.

Plaintiff's Exhibit No. 1—(Continued)

or with the knowledge and acquiescence of the Directors are hereby ratified, approved and confirmed as and for the corporate acts of this corporation.

E. S. Dulin explained his vote in the negative on the foregoing resolution by stating that in his opinion the acts of the officers and Directors in accepting and fixing the amount of compensation paid during the last fiscal year to the President and Secretary was contrary to the best interests of the minority shareholders.

Adjournment

There being no further business to come before the meeting, on motion, duly seconded and unanimously carried, the meeting was adjourned.

(Sgd) J. C. BALLAGH,
Secretary.

Approved:
(Sgd) D. G. MILLER,
President.

CERTIFICATE OF MAILING NOTICE OF
ANNUAL MEETING OF SHAREHOLDERS

J. C. Ballagh hereby certifies that he is the duly appointed and acting Secretary of Patterson-Ballagh Corporation, a California corporation, and that on the 11th day of January, 1941, he served the attached notice of the annual meeting of the shareholders of Patterson-Ballagh Corporation

Plaintiff's Exhibit No. 1—(Continued)

upon each and every shareholder of said corporation by depositing in the United States mail, in a securely fastened, prepaid wrapper, a true copy thereof addressed to each and every shareholder of said corporation at their respective last known postoffice addresses as the same appear on the books of the corporation.

(Sgd)

J. C. BALLAGH,

Secretary of Patterson-Bal-
lagh Corporation.

NOTICE OF ANNUAL MEETING OF
PATTERSON-BALLAGH CORPORATION

Notice Is Hereby Given that the annual meeting of the shareholders of Patterson-Ballagh Corporation, a California corporation, will be held on Tuesday, the 21st day of January, 1941, at 8:30 o'clock A. M., at 1900 East 65th Street, in the City of Los Angeles, County of Los Angeles, State of California, for the following purposes:

1. To receive and consider the annual report covering the activities of the corporation during the calendar year ending December 31, 1940;

2. To elect a Board of Directors for the ensuing year;

3. To consider and act upon the matter of ratifying all action taken by the officers and directors during the period since the last meeting of the shareholders;

Plaintiff's Exhibit No. 1—(Continued)

4. To transact such other business as may properly come before the meeting.

Dated this 11th day of January, 1941.

J. C. BALLAGH,
Secretary.

MINUTES OF ORGANIZATION MEETING
OF BOARD OF DIRECTORS OF
PATTERSON-BALLAGH CORPORATION

An organization meeting of the Board of Directors of Patterson-Ballagh Corporation was held on the 21st day of January, 1941, at the hour of 9:00 o'clock A. M. of said day at the office and principal place of business of the corporation at 1900 East 65th Street, in the City of Los Angeles, County of Los Angeles, State of California, immediately following the adjournment of the annual meeting of shareholders, in accordance with the provisions of the By-Laws of the corporation.

Directors Present:

H. C. Armington

J. C. Ballagh

Howard Burrell

E. S. Dulin

D. G. Miller

Directors absent:

None.

Plaintiff's Exhibit No. 1—(Continued)

Appointment of Temporary Officers

On motion, duly seconded and unanimously carried, D. G. Miller was appointed as temporary Chairman and J. C. Ballagh as temporary Secretary of the meeting and they discharged their respective duties until the election of their successors.

Reading and Approval of Minutes

The Chairman announced that the first business before the meeting was a consideration of the minutes of the special meeting of the Board of Directors held on the 29th day of November, 1940, and of the adjourned meeting of the Board of Directors held on the 3rd day of December, 1940. The Secretary then presented the minutes of said meeting.

Thereupon, on motion of Director Armington, seconded by Director Burrell and carried, Director Dulin voting in the negative as to the minutes of the special meeting of the Board of Directors held on the 29th day of November, 1940, and in the affirmative as to the minutes of the adjourned meeting of the Board of Directors held on the 3rd day of December, 1940, it was

Resolved, that the minutes of the special meeting of the *special meeting of the* Board of Directors held on the 29th day of November, 1940, and of the adjourned meeting of the Board of Directors held on the 3rd day of December, 1940, shall be and the same are hereby approved as read.

Plaintiff's Exhibit No. 1—(Continued)

Director Dulin explained his vote in the negative insofar as the minutes of the special meeting of the Board of Directors held on November 29, 1940, were concerned by stating that he was not in attendance at said meeting and therefore not familiar as to whether the minutes correctly reflected the action therein taken.

Nomination and Election of Officers

The meeting was then advised that the next order of business was the nomination and election of persons to serve as the officers of the corporation during the ensuing year, and Director Armington nominated the following persons for the offices set opposite their respective names:

President	D. G. Miller
Secretary	J. C. Ballagh
Treasurer	J. C. Ballagh
Assistant-Secretary	M. G. Nolan
Assistant-Treasurer	M. G. Nolan

There being no further nominations, on motion of Director Armington, seconded by Director Burrell and unanimously carried, it was

Resolved, that the nominations be closed and that the persons nominated as the officers of this corporation for the ensuing year shall be and they are hereby elected and appointed as such by acclamation.

Plaintiff's Exhibit No. 1—(Continued)

Report of President

The President reported to the Directors that the litigation commenced by the company in Oklahoma involving the validity of its patents covering the applicators or expanders of the company had been recently successfully terminated and that the litigation commenced against the company and certain of its officers and Directors by Byron Jackson Co. was still pending. The President also reported that the company had completed the acquisition at a cost of \$2,200.00 of the real property authorized to be purchased by the Board of Directors at their adjourned meeting on December 3, 1940, but that he had not as yet been able to get a price on the additional fifty feet located immediately south of the land purchased.

Compensation of Officers

The suggestion was made that the Directors consider the advisability of working out a basis for the compensation of the President and Secretary of the corporation depending on the amount of the earnings resulting from its business operations, but in view of the fact that Director Dulin was required to leave the meeting for another engagement it was decided to put the matter over until the next meeting of the Board of Directors for further discussion and action.

Plaintiff's Exhibit No. 1—(Continued)

Adjournment

There being no further business to come before the meeting, on motion, duly seconded and unanimously carried, it was adjourned.

(Sgd) J. C. BALLAGH,
Secretary.

Approved:

(Sgd) D. G. MILLER,
President.

[Endorsed]: Filed 7/2/1942.

Mr. Lamont: The next minutes I refer to are the minutes of the meeting of June 20, 1938, and I am reading this simply to show that the other persons of that organization were paid comparatively small salaries. In other words, the money was all taken out by the executives, for a while by Patterson, and then by Miller.

“Resolved, That the salary of Mr. J. M. O’Melveny”, who was, I think, the man in charge in the Middle West, “be increased from \$354 to \$375, effective July 1, 1938.

“Resolved Further, That Mr. O’Melveny be given a bonus of \$25 when sales in the Mid-Continent area (comprising the states of Texas, Louisiana, Oklahoma, Arkansas, New Mexico, and Illinois) exceed \$15,000 in any one month; \$50 when the sales exceed \$18,000, and \$75 when

the sales exceed \$21,000. This will in no way affect any yearly bonus which may be [13] paid by the corporation;

“Resolved Further, That the salary of Mr. T. M. Smith, Jr., be increased from \$160 to \$170 per month, effective July 1, 1938;

“Resolved Further, That a dividend of 6 per cent of the capital stock be paid out of the profits of the corporation, earned prior to June 30, 1938, to the stockholders on record as of June 30, 1938.”

I simply quoted that to show that, outside of the two chief executives, the salaries were moderate. This shows the comparison between the salaries to those men and the salaries of the other people in the corporation.

The next I will read is for January 27, 1939, just before Mr. Miller came in. We are making no pretense in this case but what these executives are entitled to \$1,000 a month. We have never complained of their management. We are complaining that they valued their services much too highly for the services they were rendering. As a matter of fact, Mr. Dulin voted to continue them as officers and also directors. There is no denial of that at all. And, after all, they were in control and he didn't have very much of a say on that. But as to their salaries I will show by letters from the parties that it was constantly objected to. And this resolution was presented by Mr. Dulin:

“Resolved, that the officers' salaries, viz: [14] Mr. Patterson and Mr. Ballagh, be each One

Thousand (\$1,000.00) Dollars per month, effective January 1, 1939.

“Resolved, that all company correspondence shall be placed in the company files.”

That is not important. That is simply brought out for that one reason.

At the meeting of February 15, 1939, I believe, Mr. Miller became a director, and we had no complaint in regard to him becoming a director. There had been a certain amount of contention between Mr. Patterson and Mr. Ballagh. However, from then on the trouble started. At the time he was elected, Mr. Armington was an employee of the company, on a very minor salary, and was also made a director at the suggestion of Mr. Miller and Mr. Ballagh. On June 29th, Mr. Burrell, who represented both Mr. Miller and——

Mr. Bednar: These statements are fine, but it seems to me if you confine yourself to the——

Mr. Lamont: I think we stipulated to all these things.

Mr. Bednar: There are some variations as you go along.

Mr. Lamont: I will proceed with the minutes, then. There is no doubt that on February 15, 1939, Mr. Miller was made a director, and also Mr. Armington.

Mr. Bednar: Mr. Miller was.

Mr. Lamont: And Mr. Armington also. On June 27, 1939, Mr. Burrell, as shown by the minutes—that was a very [15] short time after Mr. Miller came

into the organization—Byron Jackson was served with a notice which involved the repudiation of the patent agreement we had with them, which reads as follows. Before I come to that I had better present the minutes that were shown to the board. There was apparently a report by Mr. Miller, dated June 27, 1939, to the board of directors of the Patterson-Ballagh Corporation:

“Board of Directors

“Patterson-Ballagh Corporation

“Los Angeles, California

“Gentlemen:

“Since assuming office as President of Patterson-Ballagh Corporation I have taken upon myself the duty of studying the various costs in connection with the conduct of this business. I find that for the first six months of 1939 the corporation will show a loss of some \$2,000. In this study of the various costs I noted the fact that the payment to Byron Jackson Company of royalties under the license agreement was a very substantial sum, and much more than made up the differences between profit and loss to the corporation.

“A study of the situation shows that the Bettis patent has been invalidated, and we are no longer operating thereunder. We have, however, been paying royalties to Byron Jackson [16] Company on the protectors, although we have not had any protection or benefit which would flow from a patent. Substantially all of our competitors on the other hand are not under the burden of paying royal-

ties. The payment of these royalties on an unpatented product has been an important factor in the sale of protectors, particularly in the export trade. As stated, these royalty payments mean the difference between operating at a profit or a loss, and it may ultimately drive us out of the export trade.

“The facts show that our sales of Patterson-Ballagh protectors to be used in connection with the so-called Hapkins cushion joint have been so small as not to warrant the time and expense involved, and because it has been assumed that the payment of royalties on the unpatented protectors is tied into the license agreement, the result has been a continuous loss.

“Because of all this, I asked the firm of Musick and Burrell to make a study of the situation to see if there was not some means by which payment under this agreement could be eliminated. They made an analysis of the situation and prepared a memorandum which is being [17] presented at this meeting. As a result of this analysis and this memorandum, I asked the Secretary to send out notice calling a meeting of the Board of Directors in order to consider this matter at greater length.

“Very truly yours,

“D. G. MILLER.”

Then follows the opinion of Musick and Burrell. That all came along in June of 1939. Then the minutes will show that in August, 1939, not very long after this letter was written and presented to

the board, and irrespective of the supposed condition of the company, Mr. Ballagh's salary was increased to the extent of \$4,000 as of March 1, 1939.

Mr. Bednar: It began about June 1, 1939.

Mr. Lamont: What I am emphasizing here is that Mr. Miller puts himself in writing to the effect that the company is in bad shape on June 27th, and then on August 27th he raises Mr. Ballagh's salary to the tune of \$4,000 per year. And the same thing continues. In November, 1940, bonuses were declared, which amounted in each case—and the minutes show that—to one-sixth of their annual compensation.

Mr. Bednar: When was this?

Mr. Lamont: November 29, 1940.

Mr. Bednar: That is over a year and a half later.

Mr. Lamont: Thank you. I skipped something.

[18]

On March 18, 1940, there was an additional raise to Ballagh of \$1,000 per month, and then in November of 1940 there was this last raise of one-sixth of their salaries, which brought, as I have stated to the court, the total payment in 1940—and the minutes show it—to practically \$15,000, and in 1941, up to September 10th, to the extent of \$26,500, which I think at the end of the year was increased, so that the two parties—in other words that brings it up to \$50,000.

Mr. Bednar: I didn't check the figure, but I believe that should be brought out by evidence and not by argument.

Mr. Lamont: It is all in the minutes. Now, in the depositions there is a salaries and bonus account. I ask that that be submitted in evidence, the transcript of it. It extends over several pages. I don't think on this phase of the case there will be very much argument, your Honor. May it be stipulated that there is an error here in this compilation? The date 12/16/39 should be 12/16/38.

Mr. Bednar: That is correct.

Mr. Lamont: That will be Plaintiff's Exhibit 2.

The Clerk: Plaintiff's Exhibit 2. This was supplied by counsel.

PLAINTIFF'S EXHIBIT No. 2

Plaintiff's Exhibit 10-a

D.C.S.D.Cal.Cent.Div.—Civ. #1763-Y.

Byron Jackson Co., Plff. v. Patterson-Ballagh Corp. et al.,

Dfts.

[Seal]

MEYER WEISMAN

Notary Public

SALARIES—1938

Date	Ck.	J. C. B.	C. L. P.
1/14/38	152		500.00
"	153	500.00	
1/31/38	256		500.00
"	257	500.00	
2/15/38	388		500.00
"	387	500.00	
2/28/38	446		500.00
"	447	500.00	
3/16/38	537		500.00
"	538	500.00	
3/31/38	664		500.00
"	665	500.00	
4/15/38	766		500.00
"	767	500.00	

Byron Jackson Co. vs.

Salaries—1938—(Continued)

Date	Ck.	J. C. B.	C. L. P.
4/30/38	755		500.00
"	756	500.00	
5/17/38	997		500.00
"	996	500.00	
5/31/38	1097		500.00
"	1098	500.00	
6/15/38	1233		500.00
"	1234	500.00	
6/30/38	1337		500.00
"	1338	500.00	
7/15/38	1452		500.00
"	1453	500.00	
7/31/38	1536		500.00
"	1537	500.00	
8/15/38	1670		500.00
"	1671	500.00	
8/31/38	1743		500.00
"	1744	500.00	
9/15/38	1894		500.00
"	1895	500.00	
9/30/38	1957		500.00
"	1958	500.00	
10/15/38	2101		500.00
"	2102	500.00	
10/31/38	2175		1500.00
"	2176	1500.00	
11/16/38	2311		750.00
"	2312	750.00	
11/30/38	2381		750.00
"	2380	750.00	
		\$12500.00	\$12500.00

Plaintiff's Exhibit 10-b & 10-c (including last two items on original penciled sheet submitted by defendants, previously marked Ex. 10-e).

D.C.S.D. Cal. Cent. Div.—Civ. #1762-Y.

Byron Jackson Co., Plff. v. Patterson-Ballagh Corp. et al.,
Dfts.

Plaintiff's Exhibits 10-b & 10-c (one sheet—consolidated from two original penciled sheets.)

[Seal]

MEYER WEISMAN

Notary Public

SALARIES—1939

Date	Ck.	J. C. B.	C. L. P.	D. G. M.
12/16/38	102		750.00	
"	103	750.00		
12/31/38	156		750.00	
"	157	750.00		
1/16/39	303		750.00	
"	304	750.00		
1/30/39	375		250.00	
"	376	250.00		
2/15/39	499		535.75	
"	501	500.00		
2/28/39	562			464.29
"	563	500.00		
3/15/39	676			500.00
"	677	500.00		
3/31/39	744			500.00
"	745	500.00		
4/13/39	815			500.00
"	816	500.00		
4/28/39	928			500.00
"	929	500.00		
5/15/39	1058			500.00
"	1059	500.00		
5/31/39	1108			500.00
"	1109	500.00		
5/31/39	1115	1000.00		
6/15/39	1151			500.00
"	1152	500.00		
6/30/39	1276			500.00
"	1277	500.00		
7/14/39	1308			500.00
"	1309	500.00		
7/31/39	1450			500.00
"	1451	500.00		

Byron Jackson Co. vs.

Salaries—1939—(Continued)

Date	Ck.	J. C. B.	C. L. P.	D. G. M.
8/15/39	1497			500.00
"	1498	500.00		
8/31/39	1631			500.00
8/28/39	1619	1500.00		
9/15/39	1668			500.00
"	1669	500.00		
9/29/39	1742			500.00
"	1743	500.00		500.00
10/13/39	1792			500.00
"	1793	500.00		
10/31/39	1948			500.00
"	1949	500.00		
11/15/39	1982			500.00
"	1983	500.00		
11/29/39	2104			500.00
"	2105	1500.00		
		<u>15500.00</u>	<u>3035.71</u>	<u>9464.29</u>

Plaintiff's Exhibit 10-d

D.C.S.D. Cal. Cent. Div.—Civ. #1762-Y.

Byron Jackson Co., Plff. v. Patterson-Ballagh Corp, et al.,

Dfts.

Plaintiff's Exhibit 10-d.

[Seal]

MEYER WEISMAN

Notary Public

SALARIES—1940

Date	Ck.	J. C. B.	D. G. M.
12/15/39	2169		500.00
"	2170	500.00	
12/29/39	2258		500.00
"	2259	500.00	
1/15/40	2301		500.00
"	2302	500.00	
1/31/40	2398		500.00
"	2399	500.00	
2/13/40	2438		500.00
"	2439	1500.00	

Salaries—1940—(Continued)

Date	Ck.	J. C. B.	D. G. M.
2/29/40	2545		500.00
2/23/40	2529	500.00	
3/15/40	2583		500.00
"	2584	500.00	
3/18/40	2601		250.00
"	2600	500.00	
3/30/40	2702		250.00
"	2703	500.00	
3/29/40	2699		500.00
"	2700	500.00	
4/15/40	2802		750.00
"	2803	1000.00	
4/30/40	2856		750.00
4/23/40	2843	1000.00	
5/14/40	2965		750.00
"	2966	1000.00	
5/28/40	52	2000.00	
5/28/40	53		750.00
6/13/40	156		750.00
"	158	1000.00	
6/28/40	197		750.00
"	198	1000.00	
7/15/40	275		750.00
"	276	1000.00	
7/31/40	313		750.00
"	314	1000.00	
8/15/40	429		750.00
"	428	1000.00	
8/19/40	435	1000.00	
8/29/40	463		750.00
8/30/40	472	1000.00	
9/10/40	583		750.00
"	584	1000.00	
9/30/40	634		750.00
"	635	1000.00	
10/14/40	715		750.00
"	716	1000.00	

Plaintiff's Exhibit 10-e

D.C.S.D.Cal.Cent.Div.—Civ. #1762-Y.

Byron Jackson Co., Plff. v. Patterson-Ballagh Corp. et al., Dfts.
Plaintiff's Exhibit 10-e.

[Seal]

MEYER WEISMAN

Notary Public.

SALARIES—1940

Date	Ck.	J. C. B.	D. G. M.
10/31/40	743		750.00
"	744	1000.00	
11/15/40	837		750.00
"	838	1000.00	
11/27/40	864	1000.00	
11/29/40	868	1000.00	
"	869		750.00
11/29/40	871		2750.00
"	872	4166.66	
		<hr/>	<hr/>
		29166.66	19250.00

Plaintiff's Exhibit 10-f

D.C.S.D.Cal.Cent.Div.—Civ. #1762-Y

Byron Jackson Co., Plff. v. Patterson-Ballagh Corp. et al., Dfts.
Plaintiff's Exhibit 10f.

[Seal]

MEYER WEISMAN

Notary Public.

SALARIES—1941

Date	Ck.	J. C. B.	D. G. M.
12/13/40	971	1000.00	
"	970		750.00
12/31/40	1023	1000.00	
"	1024		750.00
1/15/41	1100		750.00
"	1099	1000.00	
1/31/41	1147	1000.00	
"	1148		750.00
2/14/41	1216	1000.00	
"	1217		750.00
"	1219	1000.00	

Plaintiff's Exhibit No. 2—(Continued)

Salaries—1941—(Continued)

Date	Ck.	J. C. B.	D. G. M.
2/28/41	1249	1000.00	
"	1251		750.00
3/14/41	1327	1000.00	
"	1328		750.00
3/31/41	1371	1000.00	
"	1372		750.00
4/14/41	1470	1000.00	
"	1471		750.00
4/30/41	1497		750.00
/	1498	1000.00	
5/15/41	1592	1000.00	
"	1593		750.00
5/28/41	1634	1000.00	
5/29/41	1636	1000.00	
"	1637		750.00
6/13/41	1730	1000.00	
"	1731		750.00
6/30/41	1784	1000.00	
"	1786		750.00
7/15/41	1885	1000.00	
"	1886		750.00
7/31/41	1947		750.00
"	1948	1000.00	
8/15/41	2037		750.00
"	2038	1000.00	
8/29/41	2127	1000.00	
"	2128		750.00
8/29/41	2130	1000.00	
		2100.00	13500.00

[Endorsed]: Filed Jun 29 1942. Edmund L. Smith, Clerk.

[Endorsed]: Filed July 2, 1942 by Cross, Dep. Clerk.

Mr. Bednar: May I make a suggestion at this point? That last exhibit is made up of the dates and check numbers and amounts of the checks, and it is compiled on the basis of the fiscal year of the corporation, which runs from [19] December 1 to December 1, and the resolutions in the minutes provided for compensation on the basis of the calendar year, so that there has to be a reconciliation of the two, but they do coincide, they can be reconciled.

Mr. Lamont: Next I will put in evidence the dividend account. We divided that account into three parts, dividends paid to Mr. Ballagh; dividends paid to Byron Jackson; and dividends paid to Mr. Patterson. That will be Plaintiff's Exhibit 3.

PLAINTIFF'S EXHIBIT No. 3

Plaintiff's Exhibit 1-c

DIVIDENDS PAID TO BYRON JACKSON COMPANY

Year	Check No.	Date	Amount	Total
1928	1747	10/15	\$7470.00	\$
"	1829	10/25	7470.00	
"	2461	12/17	4980.00	19,920.00
1929	2793	1/18	1245.00	
"	2834	1/26	1245.00	
"	2998	2/25	2490.00	
"	3034	3/2	2490.00	
"	3187	4/2	1245.00	
"	3296	4/15	1245.00	
"	3355	4/30	2490.00	
"	3453	5/10	1245.00	
"	3505	5/23	1245.00	
"	3654	6/11	2490.00	
"	3772	7/8	2490.00	
"	3877	7/17	2490.00	
"	3951	8/1	2490.00	

Dividends Paid to Byron Jackson Company—(Continued)

Year	Check No.	Date	Amount	Total
1929	4068	8/14	\$4980.00	\$
"	4072	8/14	2490.00	
"	4115	8/22	4980.00	
"	4118	8/31	4980.00	
"	4308	9/20	2490.00	
"	4366	9/30	2490.00	
"	4512	10/21	2490.00	
"	4534	10/25	4980.00	
"	4571	11/1	4980.00	
"	4591	11/6	4980.00	
"	4599	11/8	2490.00	
"	4733	11/20	4980.00	
"	4759	11/26	2490.00	
"	4806	12/4	2490.00	77,190.00
1930	5029	1/3	4980.00	
"	5037	1/4	2490.00	
"	5378	2/25	3735.00	
"	5387	2/28	1245.00	
"	5682	4/10	2490.00	
"	5745	4/23	2490.00	
"	5916	5/27	2490.00	
"	6374	8/15	1245.00	21,165.00
1936	2669	3/16	500.00	
"	3283	8/25	500.00	
"	3391	9/15	500.00	1,500.00
1938	1364	7/7	1500.00	
			Grand Total	\$121,275.00

Plaintiff's Exhibit 1-a

DIVIDENDS PAID TO J. C. BALLAGH

Year	Check No.	Date	Amount	Total
1928	1750	10/15	\$11,250.00	
"	1842	10/25	11,250.00	
"	2460	12/17	7,500.00	\$ 30,000.00
1929	2792	1/18	1,875.00	
"	2833	1/26	1,875.00	

Dividends Paid to J. C. Ballagh—(Continued)

Year	Check No.	Date	Amount	Total
1929	2997	2/25	\$3,750.00	
"	3033	3/2	3,750.00	
"	3186	4/2	1,875.00	
"	3294	4/15	1,875.00	
"	3354	4/30	3,750.00	
"	3452	5/10	1,875.00	
"	3504	5/23	1,875.00	
"	3653	6/11	3,750.00	
"	3771	7/8	3,750.00	
"	3875	7/17	3,750.00	
"	3950	8/1	3,750.00	
"	4067	8/14	7,500.00	
"	4070	8/14	3,750.00	
"	4114	8/22	7,500.00	
"	4180	8/31	7,500.00	
"	4306	9/20	3,750.00	
"	4365	9/30	3,750.00	
"	4511	10/21	3,750.00	
"	4532	10/25	7,500.00	
"	4570	11/1	7,500.00	
"	4590	11/6	7,500.00	
"	4597	11/8	3,750.00	
"	4731	11/20	7,500.00	
"	4761	11/26	1,000.00	
"	4762	11/26	2,750.00	
"	4805	12/4	3,750.00	\$116,250.00
1930	5028	1/3	7,500.00	
"	5035	1/4	3,750.00	
"	5377	2/25	5,625.00	
"	5385	2/28	1,875.00	
"	5681	4/10	3,750.00	
"	5743	4/23	3,750.00	
"	5914	5/27	3,750.00	
"	6373	8/15	1,875.00	\$ 31,875.00
1936	2668	3/16	750.00	
"	3282	8/25	750.00	
"	3426	9/15	750.00	\$ 2,250.00
1938	1363	7/7	2,250.00	\$ 2,250.00
Grand Total				\$182,625.00

Plaintiff's Exhibit 1-b

DIVIDENDS PAID TO C. L. PATTERSON

Year	Check No.	Date	Amount	Total
1928	1749	10/15	\$11,250.00	\$
"	1843	10/25	11,250.00	
"	2459	12/17	7,500.00	\$ 30,000.00
1929	2791	1/18	1,875.00	
"	2832	1/26	1,875.00	
"	2996	2/25	3,750.00	
"	3032	3/2	3,750.00	
"	3185	4/2	1,875.00	
"	3295	4/15	1,875.00	
"	3353	4/30	3,750.00	
"	3451	5/10	1,875.00	
"	3503	5/23	1,875.00	
"	3652	6/11	3,750.00	
"	3770	7/8	3,750.00	
"	3876	7/17	3,750.00	
"	3949	8/1	3,750.00	
"	4066	8/14	7,500.00	
"	4071	8/14	3,750.00	
"	4113	8/22	7,500.00	
"	4179	8/31	7,500.00	
"	4307	9/20	3,750.00	
"	4364	9/30	3,750.00	
"	4510	10/21	3,750.00	
"	4533	10/25	7,500.00	
"	4569	11/1	7,500.00	
"	4589	11/6	7,500.00	
"	4598	11/8	3,750.00	
"	4732	11/20	7,500.00	
"	4758	11/26	3,750.00	
"	4804	12/4	3,750.00	\$116,250.00
1930	5027	1/3	7,500.00	
"	5036	1/4	3,750.00	
"	5376	2/25	5,625.00	
"	5386	2/28	1,875.00	
"	5680	4/10	3,750.00	
"	5744	4/23	3,750.00	
"	5915	5/27	3,750.00	

Dividends Paid to C. L. Patterson—(Continued)

Year	Check No.	Date	Amount	Total
1930	6372	8/15	\$1,875.00	\$ 31,875.00
1936	2924	3/16	750.00	
"	3281	8/25	750.00	
"	3425	9/15	750.00	\$ 2,250.00
1938	1362	7/7	2,250.00	\$ 2,250.00
Grand Total				\$182,625.00

DIVIDENDS PAID TO MR. SCHURMAN OR MR. DULIN

Year	Check No.	Date	Amount	Total
1928	1748	10/15	\$30.00	
"	1830	10/25	30.00	
"	2462	12/17	20.00	\$80.00
1929	2794	1/18	5.00	
"	2835	1/28	5.00	
"	2999	2/25	10.00	
"	3035	3/2	10.00	
"	3188	4/2	5.00	
"	3297	4/15	5.00	
"	3356	4/30	10.00	
"	3454	5/10	5.00	
"	3506	5/23	5.00	
"	3655	6/11	10.00	
"	3773	7/8	10.00	
"	3878	7/18	10.00	
"	3952	8/1	10.00	
"	4069	8/14	20.00	
"	4073	8/14	10.00	
"	4116	8/22	20.00	
"	4182	8/31	20.00	
"	4309	9/20	10.00	
"	4367	9/30	10.00	
"	4513	10/21	10.00	
"	4535	10/26	20.00	
"	4572	11/1	20.00	
"	4592	11/5	20.00	
"	4600	11/11	10.00	

Dividends Paid to Mr. Schurman or Mr. Dulin—(Continued)				
Year	Check No.	Date	Amount	Total
1929	4734	11/20	\$ 20.00	
"	4760	11/26	10.00	
"	4807	12/4	10.00	310.00
1930	5030	1/3	20.00	
"	5038	1/4	10.00	
"	5379	2/25	15.00	
"	5388	2/28	5.00	
"	5683	4/10	10.00	
"	5746	4/23	10.00	
"	5917	5/27	10.00	\$80.00
	Mr. Dulin			
"	6375	8/29	5.00	85.00

[Endorsed]: Filed July 6, 1942.

Mr. Bednar: Just a minute, Mr. Lamont. There is no list of dividends which was paid to—

Mr. Lamont: Mr. Dulin was the president of Byron Jackson.

Mr. Bednar: I am going to object to putting that in. It should be done mathematically.

Mr. Lamont: It is perfectly all right, if you want to make up the total of the capitalization, which is 1,000 shares.

Mr. Bednar: This sheet can be attached.

The Clerk: What are you attaching it to?

Mr. Bednar: To the dividend exhibit which is now in evidence.

The Clerk: Are you offering this?

Mr. Lamont: It may go in as part of mine.

The Clerk: As part of Exhibit 3.

Mr. Lamont: As a matter of fact, I don't think in this [20] phase of the case there is very much doubt about the facts. Then I want to put in evidence Exhibit 13 to the deposition of Mr. Ballagh, which consists of gross and net sales of the company since 1938.

Mr. Bednar: Just a minute.

The Clerk: That will be Plaintiff's Exhibit 4.

PLAINTIFF'S EXHIBIT No. 4

S A L E S

1938	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Total	
Gross	19,045.92	28,020.05	31,864.65	29,876.95	34,812.65	34,919.34	23,665.80	27,201.00	34,136.20	19,529.20	29,907.35	312,979.11	
Dis.	2,543.82	3,455.37	3,818.34	4,683.78	4,945.26	5,438.74	2,591.03	3,239.48	4,239.17	2,925.83	3,187.51	41,068.33	
Net	16,502.10	24,564.68	28,046.31	25,193.17	29,867.39	29,480.60	21,074.77	23,961.52	29,897.03	16,603.37	26,719.84	271,910.78	
1939	Dec. 1938	Jan. 1939	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Total
Gross	21,832.40	24,561.65	22,944.25	24,265.00	25,151.05	27,956.05	28,303.98	24,427.84	18,935.08	32,410.67	39,576.08	46,163.83	336,527.88
Dis.	2,277.61	4,660.89	4,012.55	1,933.55	3,214.86	3,244.86	2,914.53	4,140.93	1,403.09	3,230.83	4,011.12	5,386.48	40,431.30
Net	19,554.79	19,900.76	18,931.70	22,331.45	21,936.19	24,711.19	25,389.45	20,286.91	17,531.99	29,179.84	35,564.96	40,777.35	296,096.58
1940	Dec. 1939	Jan. 1940	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Total
Gross	26,385.22	27,309.55	38,658.09	35,267.77	25,259.07	23,705.45	23,415.12	34,044.96	27,923.18	23,428.57	21,418.65	22,805.88	329,621.51
Dis.	3,164.01	2,092.04	4,851.00	2,821.39	2,543.36	1,845.40	1,698.57	2,130.02	1,933.39	1,990.81	1,737.25	1,973.91	28,781.15
Net	23,221.21	25,217.51	33,807.09	32,446.38	22,715.71	21,860.05	21,716.55	31,914.94	25,989.79	21,437.76	19,681.40	20,831.97	300,840.36
1941	Dec. 1940	Jan. 1941	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Total
Gross	Statement	42,882.04	22,159.93	23,093.52	31,314.71	26,052.36	31,912.18	28,648.53	37,842.21	73,533.09	23,104.74	25,877.56	366,420.87
Dis.	incl. in January	3,675.25	1,697.41	1,686.25	2,717.93	2,460.74	2,730.56	2,617.71	2,575.34	4,343.01	1,491.23	2,338.01	28,333.44
Net		39,206.79	20,462.52	21,407.27	28,596.78	23,591.62	29,181.62	26,030.82	35,266.87	69,190.08	21,613.51	23,539.55	338,087.43

D.C.S.D. Cal. Cent. Div.—Civ. #1762-Y

Byron Jackson Co., Plff. v. Patterson-Ballagh Corp. et al.,

Dfts.

PLAINTIFF'S EXHIBIT 13.

[Seal]

MEYER WEISMAN

Notary Public.

[Endorsed]: Filed Jun 29 1942. Edmund L. Smith, Clerk.

[Endorsed]: Filed July 2, 1942.

Mr. Lamont: These have all been supplied by counsel for the defendant. I want to point out one or two things on this. The total sales of 1938, the gross were \$312,979.11, and the net was \$271,910.78. The gross sales were \$336,527, and the net was \$296,096.58, in 1939. In 1940 the gross sales were \$329,621, and the net sales were \$300,840.36. In 1941 the gross sales were \$366,420, and the net sales were \$338,087.

In other words, since I am introducing that—I don't want to argue my case now, but just to point out to the court that the salaries in 1940 and 1941 were running \$50,000 to the two executives on net sales of about \$300,000.

Mr. Bednar: Net sales of \$300,000 or over.

Mr. Lamont: The net sales were a little bit over in 1941, and probably about an even \$300,000 in 1940. There is also one other element, namely, in 1940, in March, the salaries were increased, in March of 1940. Mr. Ballagh's salary was raised \$1,000, and in November of that year Mr. Ballagh was given a bonus of one-sixth of his salary, and Mr. [21] Miller was given a bonus of one-sixth of his salary. And in the meantime the gross and net sales of the company were dropping off. In March there were \$35,000 of gross sales, and in November \$22,000, and a net in March of \$32,000 and a net in November of \$20,000.

Have you with you the audit, Mr. Bednar, and also the company's statement?

Mr. Bednar: I will see.

Mr. Lamont: I want to put all these three statements in evidence, and I think counsel will probably simplify matters by agreeing with me that the net profits the year 1939 were \$20,927.25; in other words, the salaries were twice the net profits.

Mr. Bednar: Counsel, I would rather have the witnesses testify on that. I note here the profits from operations in 1939 were \$35,000. If you will tell me what you want—

Mr. Lamont: I don't think there is any need in stipulating. I will put all three in evidence.

Mr. Bednar: That is all right with me, but I want to differentiate between the salaries and the income of the company. I don't want to take a chance of misinterpreting them myself.

Mr. Lamont: They are your own.

Mr. Bednar: That is why I say the first figure you mentioned was the net profit after deduction of certain [22] items, and the other figure I mentioned was a net profit from operation. I would rather have the whole report in.

Mr. Lamont: I am perfectly willing. Mark them one number.

The Clerk: They will be Plaintiff's Exhibits 5-A, 5-B, and 5-C.

Mr. Lamont: We are not disputing the accuracy of what you furnish us at all. I would like to offer these in evidence, which show much larger profits when it came down to the auditing statements. Mark them as Exhibit 6.

The Clerk: These will be Plaintiff's Exhibits 6-A, 6-B, and 6-C.

Mr. Bednar: That was before the computation of taxes and various liabilities.

Mr. Lamont: I desire now to offer in evidence a letter written to Mr. Ballagh, secretary and treasurer of the company, one of the defendants, signed by Mr. Pennington, who was the auditor employed by these two defendants, showing the differential between the company's statement and the audit statement. In other words, according to his letter, there is a difference in 1941 of \$12,723; in other words, the company's statements were that much in excess of the auditor's statement. There is also a differential in 1940 of \$27,923.28. That is Exhibit 12 to the deposition, which I am offering in evidence now.

Mr. Bednar: Do you want to read that whole letter? [23]

Mr. Lamont: I would like to have the court read it, or shall I read it to the court?

The Court: No. I can read it.

Mr. Lamont: The letter is Exhibit 12 to the deposition, the Ballagh deposition, and the letter is dated January 23, 1942.

Mr. Bednar: Those exhibits are not included in this deposition.

Mr. Lamont: Here they are.

The Clerk: That will be Plaintiff's Exhibit 7.

PLAINTIFF'S EXHIBIT No. 7

D.C.S.D. Cal. Cent. Div. Civ. #1762-Y. Byron-Jackson Co.,
Plff. vs. Patterson-Ballagh, Corp., et al., Dfts. Plaintiff's Ex-
hibit No. 12. (two sheet).

[Seal]

MEYER WEISMAN

Notary Public

Telephone Jefferson 3145

Teletype L. A. 591

[Cut: Moulded Rubber and Plasties—Oil Field Specialties]

PATTERSON - BALLAGH

Corporation

1900 East Sixty-Fifth Street

Los Angeles, Calif.

January 23, 1942

Mr. J. C. Ballagh, Secretary-Treasurer

Patterson-Ballagh Corporation

1900 East 65th Street

Los Angeles, California

Dear Mr. Ballagh:

With reference to our recent conversation with Mr. Burrell, re-
garding the differences between the surplus net earnings as
shown on the preliminary report for fiscal years ended Novem-
ber 30, 1941 and 1940, the writer desires to make the follow-
ing explanation.

Fiscal year ended 11/30/41

The surplus net earnings as shown for November 30th, prior
to special audit, showed \$35,722.73, and the audit report showed
surplus net gain of \$22,998.94, a difference of \$12,723.79.

These differences are accounted for, shown as follows:

Cost of Sales	2,450.88*
Obsolescence	3,426.12
Depreciation—Warehouse Furnishings and Fixtures	243.86
Bad Debts Written Off	76.60
Royalties—Adjustment	260.12*
Royalties—Contingent	8,887.50
Machinery Depreciation—Adjustment....	1,343.47
Installation Tools—Depreciation Adjust.	1,701.10

Total..... \$12,723.79

* Figures in red.

Fiscal year ended 11/30/40

The chief differences for fiscal year ended 11/30/40 of \$27,-723.78 consisted chiefly of inventories adjustments of \$27,854.89. In explaining these differences, desire to state that in changing over the system of accounting at the time that the writer came into the picture as auditor for the corporation, and in order to have as near as possible a correct inventory, it was necessary to decrease the inventory by an amount of \$9,628.32. This was a decrease from the amount as shown on the November 30, 1940 preliminary financial statement for fiscal year ended 11/30/40.

There was an adjustment of Receivables,—one item of consigned merchandise (Turner Valley Supply Company, Canada) of \$4,397.90; Bad Debts Written Off, \$1,136/74; Depreciation Adjustments of \$3,917.04 and Contingent Liability of \$8,782.50. The balance of the amount of the total differences consisted of minor adjustments made in the various accounts to bring them down to actual.

Trusting this fully explains the differences after special audit for 1940, I am

Very truly yours,

JOSEPH "H" PENNINGTON

Joseph "H" Pennington

Certified Public Accountant

[Endorsed]: Filed June 29, 1943.

[Endorsed]: Filed July 2, 1942, by Cross, dep. clerk.

Mr. Lamont: I now place in evidence another letter written by Mr. Dulin to Patterson-Ballagh at a different time. I next offer in evidence—this is Exhibit 7 to the deposition we have just been referring to—a letter written by Mr. Dulin to Mr. Ballagh, dated February 1, 1937.

Mr. Bednar: Just a minute.

Mr. Lamont: This is Exhibit 7 referred to in the deposition.

Mr. Bednar: That is not the original.

Mr. Lamont: I think I demanded the original from you. Is there any question about that being a copy?

Mr. Bednar: Here is the original.

Mr. Lamont: We will put the original in, then.

The Clerk: That will be Plaintiff's Exhibit 8.

Mr. Lamont: It reads:

“February 1, 1937 [24]

“Mr. J. C. Ballagh, Secretary

“Patterson-Ballagh Corporation

“1900 East 65th Street

“Los Angeles, Calif.

“Dear Jack:

“Referring to the recent stockholders' meeting, in connection with the resolution approving the acts of record of the officers and directors during the past year, I wish to state that I am agreeable to the approval of such resolution, provided there is inserted in the minutes that I do not approve those acts which I have previously disapproved or objected to.

“From the preliminary financial statement rendered, I also wish to state that in my opinion the company's financial condition has not allowed the administrative salaries being paid which in my opinion are excessive and further, the dividends declared during the year should not have been paid.

Taking into consideration the condition of the business, the volume of sales, as a director and a stockholder, I urge that the administrative salaries be adjusted downward and that no further dividends be paid until the company is in a greatly improved financial condition.”

Mr. Bednar: That letter was written about a year prior to the period in controversy. [25]

Mr. Lamont: I next want to offer in evidence a letter dated March 23, 1937, addressed by Mr. Dulin to Mr. Patterson. The letter is dated March 23, 1937. I will offer it in evidence.

The Clerk: That will be Plaintiff's Exhibit 9.

Mr. Lamont:

“Mr. C. L. Patterson, President

“Patterson-Ballagh Corporation, Ltd.

“1900 E. 65th St.

“Los Angeles, Calif.

“Copy to Mr. J. C. Ballagh, Secretary.

“My Dear Pat:

“I have just heard that you are contemplating shutting down the factory in the near future. The reason for doing so, I am not conversant with. It is probably due to one or a combination of the following: finances, current business, or labor difficulties. In the past, I have requested current financial statement promptly and for some reason they have not been forthcoming.

“In the past, I have stated very definitely my views as to executive salaries, dividends, etc. These have been disregarded and I have been in the minority; therefore, the operators of the company being a majority of the directors and recipients of (in my opinion) unwarranted high [26] salaries. In the procedure that you follow, the responsibility for same is clearly up to the majority of stockholders and the directors who have voted in favor of the acts that I have complained of. Representing a substantial percentage of the stock and as a director, I resent these acts and do not in any way release the majority directors from the liability entailed.

“I do not know whether you are temporarily closing the plant or if it is to be a permanent nature and liquidation of the business. Therefore, if any such act is planned at this time, you should call a directors meeting at a time that is mutually convenient so that these matters of importance may be presented to the board. If the majority operating directors are going to continue to operate the business at they see fit without even calling directors meetings on vital points, I, in behalf of the stock which I represent will hold those majority directors accountable.”

Mr. Bednar: That is a letter of March, 1937?

Mr. Lamont: Yes.

Mr. Bednar: That is the year Mr. Dulin voted for a dividend and voted for \$1500 a month.

Mr. Lamont: 'Take a look at the profits during that [27] period.

The next is a night letter, marked Plaintiff's Exhibit 5 to the deposition, and I am offering that in evidence. It is dated September 25, 1938.

The Clerk: That will be Plaintiff's Exhibit 10.

Mr. Lamont: It reads as follows:

"Patterson-Ballagh Corp.

"1900 East 65 St.

"Losa

"Notice directors meeting twenty-seventh just received. Object to action this meeting Paragraph number three reference increasing officers salaries as desire to be present when discussed and voted upon stop Recent policy of company to have regular monthly meeting certain specified time I was available then and now special meeting called in my absence."

It is signed "E. S. Dulin."

The next letter I offer is one dated July 20, 1939, which is marked Plaintiff's Exhibit 4 to the deposition. I offer it in evidence.

The Court: All right.

Mr. Lamont: It reads as follows.

The Clerk: Let me have it to mark, please.

Mr. Bednar: What is the number?

Mr. Lamont: It is Exhibit 4 to the deposition.

The Clerk: That will be Plaintiff's Exhibit No. 11. [28]

Mr. Lamont: It reads as follows:

"Since my letter to you of June 27, I have been away from the office a great deal on a vacation period. However, during this interim, I have had an opportunity of going over the corporation's statement for May, 1939, and note that executive salaries for the month of May were \$3,000. Upon comparison with April, I find the same item at \$2,000. To-day I have reviewed the minutes of the directors meeting of February 15, 1939, particularly that resolution on page 8 thereof. At the directors meeting held June 27, there was no discussion or even mention of any change in the officers' salaries.

"Awaiting your explanation on the foregoing, I am,

"Yours very truly."

I am next offering a letter dated September 8, 1939. I offer as Exhibit 12 a letter of September 8, 1939. That was Exhibit 3 to the deposition.

The Clerk: That will be Plaintiff's Exhibit No. 12.

Mr. Lamont: It reads as follows. It is addressed to the Patterson-Ballagh Corporation:

"Attention of Mr. J. C. Ballagh [29]

"Gentlemen:

"On your balance sheet for July 31, 1939, under Current Assets, I would appreciate it if you would advise me what the following item consists of:

‘Fund Account, \$1,711.78.’

“I have just noted the copy of the minutes of your meeting of August 22 which accompanied your letter of September 6. This is the meeting that I was unable to attend. I note that the compensation of the secretary and treasurer was increased \$4,000 per year. Taking into consideration the present condition of the company, the earnings so far attained this year, the prospects for the future, and further, Mr. Miller’s remarks at a previous meeting in connection with profits, I feel very definitely that the executive salaries of the Patterson-Ballagh Corporation should not be increased. I regret that it was impossible for me to be at the meeting so that I could object to this increase, which I do not believe, from all information I have at hand, is warranted at this time.”

The next letter I offer is a letter dated February 25, 1941.

Mr. Bednar: Which one is that?

Mr. Lamont: It is Exhibit 9 to the deposition. It [30] will be Exhibit No. 13, will it not?

The Clerk: Plaintiff’s Exhibit 13.

Mr. Lamont: It reads as follows: It is addressed to Mr. Miller.

“Dear Mr. Miller:

“I have just returned from the East and note your letter of the 19th enclosing the public accountants’ statement for Patterson-Ballagh Corporation for the year ending November 30, 1940. I have not had a chance to study same, but at a quick glance, note that the profit figures as ren-

dered by the above referred to accountants are at great variance with the company figures which you had available at the time of your November meeting and its adjournment, at which time you voted Mr. Ballagh and yourself and other employees substantial bonuses. The company's statement before taxes on income as of November 30, 1930"—it reads "1930"; I think it means "1940"—"which was rendered to the directors shows a profit of approximately \$51,000, compared to the public accountants' figures of approximately \$23,000.

"As soon as I have time, I will give further study to the report. In the meantime, if you could advise me as to the large discrepancy be- [31] tween the company's figures and the public accountants', it would be welcome.

"Yours very truly."

I then offer in evidence a letter dated June 25, 1941, addressed to the Patterson-Ballagh Corporation, and marked Exhibit 2 to the deposition. I thing the original was attached, because I have a photostat of the original. That letter went in twice in the deposition. It went in as a copy and also the original. I am offering it.

The Clerk: It will be Plaintiff's Exhibit 14.

Mr. Lamont:

“Patterson-Ballagh Corporation

“1900 E. 65th St.

“Los Angeles, Calif.

“Attention: J. C. Ballagh, Secretary.

“Gentlemen:

“I beg to acknowledge your letter of the 19th enclosing the May statement, from which I note that you were just able to keep your head above water as far as earnings are concerned when taking into consideration the excessive administrative salaries, which are certainly not justified by the showing made.

“On February 25, 1941, I wrote Mr. Miller, asking for some enlightenment as to the great discrepancy between company earnings and the figures by the auditors for last year. If you will recall, [32] it was the company’s figures upon which you based salary increases, bonuses, and other expenditures. It would seem to me that you have had plenty of time to advise me in this connection and I would appreciate a reply.

“One of the conditions and justifications for your acts was that these salaries would be promptly adjusted downward should the trend of earnings (as represented) change from what was prevailing at that time. Your audit results show that you did not have the earnings as represented and certainly the company’s figures for this year do not show any justification for same.”

I wish now to place in evidence—I have copies here, and I am going to ask counsel to stipulate,

subject to the right of correction, that the four exhibits in the complaint in civil action pending in this court, numbered 1087-H, which are the four agreements making up the license patent arrangement that existed between Byron Jackson and Patterson-Ballagh——

Mr. Bednar: You are asking now concerning these four documents?

Mr. Lamont: I am offering them in evidence. It is all a matter of record in this court.

Mr. Bednar: The question that occurs to my mind is this: That was a long, complicated case, and we can put in [33] only part——

Mr. Lamont: We are perfectly willing to put the entire record in, if you want it. We would be delighted to.

Mr. Bednar: It seems to me it encumbers the record to put all this other in. So far as these original agreements are concerned, if we have a right to check the agreements, I have no objection to them going in, but how much further we should go I frankly don't know.

Mr. Lamont: All I intended to offer were these four agreements, along with your repudiation of June 30, 1939. That was an exhibit to your answer. I was going to stop there. If you want anything else in from that record, we would be delighted to have it.

Mr. Bednar: Those four agreements, plus that repudiation. The trial lasted a long time, and there were over a hundred pages of briefs.

The Court: This is only for a limited purpose?

Mr. Lamont: Simply to show that, as part of the same idea, Mr. Miller came in and repudiated our license agreement and stopped paying dividends and raised salaries.

Mr. Bednar: Where is the stock book?

Mr. Lamont: I thought it was there. I thought I had copies of it. I think it is Exhibit 5, is it?

Mr. Bednar: No.

Mr. Lamont: I have copies here. Here is a copy. I don't care anything about 6, unless you want it. [34]

Mr. Bednar: No. Subject to correction, and with the stipulation that the pencil notations appearing on these will be disregarded——

Mr. Lamont: You can disregard those. And also I have marked them exhibit so-and-so, applying to the other case.

The Clerk: They will be Plaintiff's Exhibits 15-A, 15-B, 15-C, and 15-D.

PLAINTIFF'S EXHIBIT No. 15-A

[Written in pencil, top margin]: Exclusive License to Pat.-Bal. under Hopkins patent. 8 copies.

(Copy of Original Agreement)

AGREEMENT

This Agreement, made and entered into this 20th day of September, 1928, by and between Byron Jackson Pump Company, a corporation of Delaware, having a place of business at Los Angeles, California, hereinafter called the Licensor, and Patterson-Ballagh Corporation, a corporation of Califor-

nia, having its place of business at Los Angeles, California, hereinafter called the Licensee,

Witnesseth:

That Whereas, Licensor is the owner of U. S. Letters Patent No. 1,619,728, issued March 1, 1927 to Arthur C. Hopkins for cushion joint for rotary drill pipes;

[Printer's Note: Hopkins written in pencil above figures 1,619,728.]

And Whereas, Licensee is desirous of acquiring the exclusive right, liberty, license and privilege to make, use and sell the inventions, devices and things claimed and patented in and by said Letters Patent No. 1,619,728, together with any improvements thereon made and acquired by the Licensor and any letters patent which may issue therefor, or any re-issue, division or extension thereof;

[Printer's Note: Hopkins written in pencil opposite figures 1,619,728.]

Now, Therefore, in consideration of the sum of one dollar (\$1.00) paid by the Licensee to the Licensor, receipt whereof is hereby acknowledged, and of the mutual covenants contained herein, and for other good and valuable considerations, the parties hereto have agreed as follows:

1. The Licensor grants and conveys to the Licensee, its successors, legal representatives and assigns, subject to the terms and conditions and covenants hereinafter set forth, the exclusive right, liberty, privilege and license to manufacture, use and sell to others to use throughout the United States and all the territories thereof, and all foreign countries,

the invention or inventions, devices and things disclosed, claimed and patented in said Letters Patent No. 1,619,728, granted March 1, 1927 to said Arthur C. Hopkins for cushion joint for drill pipes, and throughout the whole term for which said Letters Patent have been issued, together with any re-issue, division or extension thereof, with any improvements thereon made or acquired by Licensor.

[Printer's Note: Hopkins written in pencil above figures 1,619,728.]

2. The Licensee agrees to pay to the Licensor a royalty or license fee of twenty-five cents (25c) on each and every well casing protector sold by the Licensee and which contains or embodies the invention or inventions of any claim or claims of said Letters Patent No. 1,619,728, or of Letters Patent No. 1,573,031, issued February 16, 1926, to one William I. Bettis, on application of said Bettis and one Leroy H. Perry, and which device, thing or invention shall be so sold to be used on well drill pipe or the joints or couplings thereof; and, similarly, to pay a royalty or license fee equal and equivalent to fifteen percent (15%) of the net proceeds of sale of all such devices of both said Letters Patent Nos. 1,619,728 and 1,573,031, sold by the Licensee for any other kind or purpose of use, of which said fifteen percent (15%) of net proceeds one-half shall be paid to Licensor and one-half to said William I. Bettis, owner of said Bettis patent, in amplification of royalties or license fees heretofore agreed to be paid to him by Licensee; and ~~also Licensee agrees to pay to Licensor for all tool joints and drill collars, minus~~

~~ushions, sold by Licensee and containing or embodying any invention, device or thing claimed and patented in and by said Letters Patent No. 1,619,728, namely, twenty-five cents (25c) for each such last mentioned device or thing three inches (3") or under in standard diameter, fifty cents (50c) for each such last mentioned device or thing over three inches (3") and under five inches (5") in standard diameter, and seventy-five cents (75c) for each such latter device or thing five inches (5") and over of standard diameter.~~

[Printer's Note: Hopkins written in pencil above figures 1,619,728. Bettis written in pencil above figures 1,573,031. Initials C.L.P., R.S., J.C.B. typed in left-hand margin.]

3. Each such royalty or license fee as specified and named in the paragraph numbered "2" hereof shall be paid by the Licensee to the Licensor on the 25th day of each and every calendar month from and after November 1, 1928, and computed and calculated upon the devices, things and inventions sold and delivered by the Licensee within the scope and meaning of this license, during the preceding calendar month; and such payments and each thereof shall be made to Licensor at its place of business at Los Angeles, California.

4. The Licensee covenants and agrees to deliver to the Licensor at its said Los Angeles address, on or before the 25th day of each calendar month during the life of this agreement, a true statement in writing setting forth the number of licensed devices, inventions or things manufactured and sold

by or on behalf of licensee during the preceding calendar month, together with the names of the purchasers thereof. The Licensee also agrees that it will, upon demand of the Licensor, cause any such statement made by the Licensee to be verified under oath by an officer of the Licensee, or the Licensor by its agent may at any time during business hours have access to the books of Licensee to check and audit same.

5. Should the Licensee be sued by any third party for the infringement of any patent because of the manufacture by the Licensee of any device, thing or invention claimed and patented in and by said Letters Patent No. 1,619,728, the Licensee agrees to defend said suit at the joint cost and expense of Licensor and Licensee.

6. Should the Licensee desire to bring suit against any infringer of said patent No. 1,619,728, the Licensor agrees that said suit may be brought in its name or in the name of the then owner or owners of all right, title and interest in and to and under said Letters Patent No. 1,619,728, or both in such name or names and the name of Licensor, either with or without the name of Licensee, and it agrees to assist in all reasonable ways in the preparation and prosecution of said suit, at the joint cost and expense of the Licensor and Licensee, and that in such event the Licensor and Licensee shall receive any damages or profits or both awarded in such suit share and share alike.

7. It is agreed that in the event the Licensee should be adjudged a bankrupt, then and in such

an event the Licensor may terminate this agreement if it so desires, and all rights granted herein and hereby shall be relinquished and surrendered by the Licensee and revert back to the Licensor.

8. Time is the essence of this agreement, and should either party hereto fail to make good any default hereunder, within thirty days of receipt from the other party of written notice of default, it is agreed that this agreement may thereupon be terminated against the defaulting party by the mailing ^{its} to said defaulting party at its last known address, by the other party, Licensee or Licensor, as the case may be, of a written notice so terminating this agreement.

9. The Licensee agrees to advertise said well casing protectors from time to time in leading oil trade journals, to that end employing the names "Bettis" and "Hopkins" in identification of such well casing protectors, and will use aggressive sales methods aimed at bringing the said well casing protectors before the different oil operators and producers, and will use its best efforts to create a demand for said devices.

10. The Licensee agrees to conspicuously mark each and every thing, device or invention made or caused to be made and sold by it under the license or any license or privilege of this agreement, with the number and date of said Hopkins patent, to wit, No. 1,619,728, March 1, 1927, and the number and date of said Bettis patent, to wit, No. 1,573,031, February 16, 1926.

11. The Licensee shall supply all reasonable demands of the public for said well casing protectors as licensed herein and hereby, and should the Licensee fail to supply such demand, this agreement may be terminated at the option of the Licensor upon service of a sixty days' notice in writing upon the Licensee.

This agreement made in triplicate.

Signed at Los Angeles, County of Los Angeles, State of California, this 20th day of September, 1928, said corporations hereunto affixed their corporate signatures by their respective presidents and their corporate seals attested by their respective secretaries, each duly authorized by their respective boards of directors.

BYRON JACKSON PUMP
COMPANY

By ROBERT SCHURMAN (Signed)
Vice Pres.

Seal:

Attest:

H. J. ELLEN (Signed)
Secretary

PATTERSON-BALLAGH
CORPORATION

By C. L. PATTERSON (Signed)
President

Seal:

Attest:

J. C. BALLAGH (Signed)
Secretary

Endorsement by William I. Bettis

In consideration of the payments agreed to be made, and to be made to me pursuant to the terms of the foregoing agreement, I do hereby endorse and approve same under and pursuant to agreement between myself and said Licensee made and entered into December 2d, 1927, said Licensee being therein stated as comprising C. L. Patterson and J. C. Ballagh, and payments to me under which latter agreement and as therein expressed and provided shall continue. It is expressly understood that this endorsement shall in no way affect reduce the royalties agreed upon between myself and said C. L. Patterson and J. C. Ballagh, under the License Agreement entered into December 2nd, 1927.

[Printer's Note: W.I.B. typed in right-hand margin, and circled in pencil; also the word "affect" circled in pencil and marked out in purple ink.]

Dated: September 20th, 1928.

(Signed) W. I. BETTIS

[Endorsed]: Filed July 2, 1942.

PLAINTIFF'S EXHIBIT No. 15-B

[Written in pencil, top margin]: Exclusive License to BJCO to sell all metal Hopkins Joints under Bettis Patents. 8 copies.

(Copy of Original Agreement)

AGREEMENT

This Agreement made and entered into this 20th day of September, 1928, by and between Patterson-Ballagh Corporation, a California corporation, with its principal place of business at Los Angeles, California, herein called the party of the first part, and Byron Jackson Pump Co., a Delaware corporation, with its principal place of business at West Berkeley, California, herein called the party of the second part.

Witnesseth

Whereas, the party of the first part is the sole Licensee for the manufacture and sale of the Bettis Casing Protector under United States Letters Patent No. 1,573,031, hereinafter called "Bettis Patent", and

Whereas, the party of the second part is the owner of United States Letters Patent No. 1,619,728, described as the Hopkins Patent for Cushion Joint, and hereinafter called "Hopkins Patent", and

[Printer's Note: Written in pencil, left-hand margin]: $\frac{1}{2}$ interest in this patent assigned to Patterson-Ballagh Dec. 29, 1931 whereby they receive $\frac{1}{2}$ of the royalties.

Whereas, the second party has granted unto the said first party an exclusive license of even date

herewith, granting to said second party the sole right to manufacture, use and sell devices under United States Letters Patent No. 1,619,728, described as the Hopkins Patent for Cushion Joint, and

Whereas, the second party is desirous of obtaining the exclusive right, liberty and license to make, use and sell the inventions, devices and things claimed and patented under and by said Letters Patent No. 1,619,728, together with any improvements thereon made and acquired by said first party and any Letters Patent which may issued therefor or any reissue, division or extension thereof,

Now Therefore, in consideration of the premises and performance of the covenants and agreements herein exchanged, it is agreed between the parties hereto, as follows:

1. The first party grants and conveys to the Licensee, its successors, legal representatives, assigns and sublicensees, subject to the terms and conditions and covenants hereinafter set forth, the exclusive right, liberty privilege and license to manufacture, use and sell to others to use, throughout the United States and all the territories thereof, and all foreign countries, the part or parts of the invention or inventions, devices and things disclosed, claimed and patented in said Letters Patent No. 1,619,728, that is or are made of steel or other metal, for the full term of said Letters Patent, together with any reissue, division or extension thereof with any improvements thereon made or acquired by Licensor, the said party of the first part reserving

to itself, its successors in interest and assigns the right to manufacture and furnish all rubbers or cushions of every kind and nature, excepting steel or other metal, used in connection with the manufacture of said devices under said Hopkins Patent. And the said party of the second part agrees for itself, its successors in interest, assigns and sublicensees, that it and they will purchase all rubbers or cushions of every kind and nature, excepting steel or other metal, used in connection with the manufacture, sale and use of Hopkins Joints from said first party.

2. It is hereby understood and agreed by and between the parties that this is a paid-up license and that the consideration for the granting of this license is that the second party, its successors in interest and assigns and sublicensees, are hereby obligated to purchase all cushions to be used in connection with the devices manufactured and sold hereunder from said first party.

3. The said second party agrees to keep true and accurate books of account showing the number of said devices manufactured and sold hereunder, which books of account shall be open during all usual business hours for the inspection of the first party or his authorized agent; the said second party agrees to render monthly a statement in writing to the first party on the twenty-fifth day of each and every month during the term of this license, setting forth a true statement of the number of Hopkins Cushion Joints sold by it and its sublicensees during the preceding month.

4. The licensee agrees that each of said Hopkins Cushion Joints manufactured and sold hereunder shall be marked with the word "Patented" together with the number of said Hopkins Patent, to-wit, No. 1,619,728.

In Witness Whereof the parties hereto have caused this agreement to be executed in their respective names by duly authorized officers, and their respective corporation seals to be hereto attached.

PATTERSON BALLAGH
CORPORATION

By C. L. PATTERSON (Signed)
President

Seal:

Attest:

J. C. BALLAGH (Signed)
Secretary

BYRON JACKSON PUMP CO.
By ROBT. SCHURMAN (Signed)
Vice President

Seal:

Attest:

H. J. ELLEN (Signed)
Secretary

[Endorsed]: Filed July 2, 1942.

PLAINTIFF'S EXHIBIT No. 15-C

Agreement to sell $\frac{1}{2}$ Hopkins pat. to Patterson & Ballagh

(Copy of Original Agreement)

AGREEMENT

This Agreement made and entered into this 20th day of September, 1928, by and between Byron-Jackson Pump Co., a Delaware corporation with offices at the City and County of San Francisco, State of California, Party of the First Part, and C. L. Patterson and J. C. Ballagh, both of the City of Los Angeles, County of Los Angeles, State of California, Parties of the Second Part,

Witnesseth:

Whereas, the said party of the first part is the sole and exclusive owner of United State Letters Patent No. 1,619,728 issued March 1, 1927, to Arthur C. Hopkins for Cushion Joint for Rotary Drill Pipe, and

Whereas, the said party of the first part did, on the 20th day of September, 1928, grant unto Patterson-Ballagh Corporation, a California corporation, having its principal place of business at Los Angeles, California, the exclusive right, liberty, license and privilege to make, use and sell the inventions, devices and things claimed and patented in and by said Letters Patent, and

Whereas, the said party of the first part is also the owner of certain new and useful inventions in drill pipe couplings and applications for United

States Letters Patent Serial No. 77,272 filed December 23, 1925, and Serial No. 111,491 filed May 25, 1926, for the same, and known as the Hardesty applications, and

Whereas, the said parties of the second part are desirous of purchasing an undivided one-half interest in and to United States Letters Patent No. 1,619,728 and an undivided one-half interest in and to that certain License Agreement between the said party of the first part, licensor, and the Patterson-Ballagh Corporation, licensee, and dated September 20, 1928, and mentioned above:

Now, Therefore, in consideration of the premises and the covenants and agreements hereinafter contained by both parties to be kept and performed, the parties do hereby agree together as follows:

I.

The said party of the first part hereby agrees to sell to the said parties of the second part an undivided one-half interest in and to United States Letters Patent No. 1,619,728 issued March 1, 1927, and an undivided one-half interest in and to that certain License Agreement of date September 20, 1928, by and between the party of the first part, Licensor, and Patterson-Ballagh Corporation, Licensee, for the sum of Thirty-seven Thousand Five Hundred (\$37,500.00) Dollars and other good and valuable considerations this day passing from said parties of the second part to said party of the first part, the said sum of Thirty-seven thousand Five Hundred (\$37,500.00) Dollars to be paid as follows, to wit:

The said party of the first part shall collect all royalties due and payable from the said Patterson-Ballagh Corporation under the term and condition of said License Agreement between the party of the first part, Licensor, and said Patterson-Ballagh Corporation, parties of the second part, Licensee, until said party of the first part has received the total sum of Seventy-Five Thousand (\$75,000.00) Dollars. When said party of the first part has received from said royalties under said License Agreement the sum of Seventy-five Thousand (\$75,000.00) Dollars, then it agrees to convey to said parties of the second part by good and sufficient assignments an undivided one-half interest in and to said United States Letters Patent No. 1,619,728 and an undivided one-half interest in and to said License Agreement, and after that date the said party of the first part shall receive one-half of all royalties under said contract and the said parties of the second part shall receive the other half of said royalties, share and share alike.

II.

It is further understood and agreed by and between the parties hereto that in the event of patent infringement litigation by the Patterson-Ballagh Corporation on either the Hopkins Patent No. 1,619,728 or the Bettis Patent No. 1,573,031, that if any advantage could be obtained by said Patterson-Ballagh corporation under any patent, or patents, that may issued under the Hardesty applications, Serial No. 77,272 filed December 23, 1925, and Serial No. 111,491 filed May 25, 1926, then, and in that

event, the said party of the first part will extend to the said Patterson-Ballagh Corporation all such benefits and advantages under any and all patents which may issued to them under said applications for Letters Patent.

III.

It is understood and agreed by and between the parties hereto that each of the parties hereby give to the other the right and privilege to inspect their respective books and accounts pertaining to all business having to do with all devices manufactured or sold under this agreement.

In Witness Whereof the party of the first part, by its duly authorized officers has caused these presents to be executed and the said parties of the second part have hereunto set their hand this 20th day of September, 1928.

BYRON JACKSON PUMP CO.

(Signed) By ROBERT S. SCHURMAN
Vice Pres.

(Signed) By H. J. ELLEN [Seal]
Secretary

(Signed) C. L. PATTERSON

(Signed) J. C. BALLAGH

[Endorsed]: Filed, July 2, 1942.

PLAINTIFF'S EXHIBIT No. 15-D

Stock Purchase & Option

(Copy of Original Agreement)

This Agreement, made and entered into this 20th

day of September, 1928, by and between C. L. Patterson and J. C. Ballagh, both of Los Angeles, hereinafter called First Parties, and Byron Jackson Pump Co., a Delaware corporation, with its principal place of business in San Francisco, California, hereinafter called Second Party,

Witnesseth:

Whereas, First Parties are the owners of all of the shares (excepting one share) of the capital stock of Patterson-Ballagh Corporation, a California corporation, with its principal place of business in Los Angeles, California, and

Whereas, Second Party has entered into a contract with said Patterson-Ballagh Corporation for the manufacture and sale of a certain cushion joint (U. S. Letters Patent #1,619,728), and desires to purchase from First Parties part of their stock holdings in said Patterson-Ballagh Corporation,

Now, Therefore, in consideration of the premises and of the covenants and agreements of the parties hereto as hereinafter set forth, said parties do hereby covenant and agree as follows, to wit:

1. First Parties agree to sell to Second Party and Second Party agrees to purchase of First Parties Two Hundred and Fifty (250) shares of the capital stock of the said Patterson-Ballagh Corporation for the sum of Twenty-five Thousand Dollars (\$25,000.00) and to pay said sum to First Parties at Los Angeles, California, on or before September 20, 1928, upon the delivery of a certificate or certificates in the name of Second Party and

representing said Two Hundred and Fifty (250) shares, First Parties representing and agreeing that said Two Hundred and Fifty (250) shares shall constitute a one-fourth ($\frac{1}{4}$) interest in said corporation. In the event that said sum of Twenty-five Thousand Dollars (\$25,000.00) is paid by Second Party to First Parties on or before September 20, 1928, as contemplated by the terms of this paragraph, Second Party shall be entitled to receive all dividends declared at any time on or after September 1, 1928, upon said Two Hundred and Fifty (250) shares.

2. First Parties hereby give and grant to Second Party an option to purchase of and from First Parties additional shares of the capital stock of said Patterson-Ballagh Corporation, such additional shares to be not less than One Hundred and Twenty-five (125) shares and not to exceed Two Hundred and Fifty (250) shares, (as may be determined by Second Party subject to paragraph 4 of this agreement) at the price of One Thousand Dollars (\$1,000.00 per share, payable upon the delivery to Second Party by First Parties of a certificate or certificates standing in the name of Second Party and representing the number of shares as to which said option has been exercised, said option to be exercised and only to be exercised upon September 1, 1929, or upon September 15, 1929, or upon any date between said two last mentioned dates, by written notice by Second Party to First Parties either served upon First Parties personally or left, addressed to First Parties, at the office of said Patterson-Ballagh Corporation in the City of Los An-

geles, or mailed, postage prepaid, to First Parties at their last known addresses. First Parties agree that Second Party shall be given the opportunity at any time subsequent to September 1, 1929, and prior to September 15, 1929, to audit the books of said Patterson-Ballagh Corporation. First Parties represent and agree that, in the event of the exercise of said option, Two Hundred and Fifty (250) shares will, at the time of the transfer to Second Party of additional shares in accordance with the terms of said option, constitute a one-fourth ($\frac{1}{4}$) interest in said corporation.

3. In the event that Second Party shall exercise said option granted to Second Party by paragraph 2 of this agreement and in the further event that the net profits of said Patterson-Ballagh Corporation for the twelve (12) months' period from September 1, 1928, to September 1, 1929, (computed in the manner that net profits have been ordinarily computed by said Patterson-Ballagh Corporation but before deduction for Federal income taxes) shall exceed the sum of Two Hundred Thousand Dollars (\$200,000.00) then the purchase price for the number of shares so to be purchased under said option shall, in lieu of One Thousand Dollars (\$1,000.00) per share, equal the number of shares so to be purchased multiplied by One Thousand Dollars (\$1,000.00) less a fractional amount of such excess the numerator of which fraction shall be the number of shares to be purchased and the denominator of which shall be One Thousand (1,000).

4. The option given Second Party by paragraph 2 of this agreement, irrespective of anything here-

tofore contained to the contrary, shall not bestow upon Second Party a right to purchase a number of shares of the capital stock of said Patterson-Ballagh Corporation which if added to the Two Hundred and Fifty (250) shares to be purchased under paragraph 1 of this agreement would give Second Party a greater interest in said corporation than the proportion that the net sales by said Patterson-Ballagh Corporation under the "Hopkins" Patent (to wit, U. S. Patent #1,619,728) plus one-half ($\frac{1}{2}$) of the net sales to the customer by either Patterson-Ballagh Corporation or by Second Party of any devices the manufacture of which shall hereafter commence under either the "Bettis" Patent (to-wit) U. S. Patent # 1,573,031) or the said "Hopkins" Patent, plus one-half ($\frac{1}{2}$) of said net sales to the customer by either Patterson-Ballagh Corporation or by Second Party of any devices the manufacture of which shall hereafter commence under either the said "Bettis" Patent or the said "Hopkins" Patent plus the net sales of said Patterson-Ballagh Corporation under the said "Bettis" patent. The term "net sales" as used in this paragraph shall mean net sales for the months of June, July and August, 1929.

5. In addition to the option given Second Party by the provisions of paragraph 2 hereof, and in the event that on or before September 20, 1928, Second Party pays to First Party the sum of Twenty-five Thousand Dollars (\$25,000.00), (said last mentioned sum of Twenty-five Thousand Dollars (\$25,000.00) being in addition to the sum of Twenty-five Thou-

sand Dollars (\$25,000.00) mentioned in paragraph 1 hereof), First Parties do hereby give and grant to Second Party the option to purchase of and from First Parties Two Hundred and Fifty (250) shares of the capital stock of said Patterson-Ballagh Corporation at the price of One Thousand Dollars (\$1,000.00) per share, said sum of Twenty-Five Thousand Dollars (\$25,000.00) to apply on said purchase price in the event of the exercise of said option, provided, however, that the option given by this paragraph shall be exercised and shall only be exercised on or before March 20, 1929, by written notice by Second Party to First Parties either served upon First Parties personally or left, addressed to First Parties, at the office of said Patterson-Ballagh corporation in the City of Los Angeles, or mailed, postage prepaid, to First Parties at their last known addresses. The purchase price of said shares as in this paragraph provided shall be paid by Second Party to First Parties upon the delivery by First Parties to Second Party of a certificate or certificates standing in the name of the Second Party and representing said Two Hundred and Fifty (250) shares, (First Parties to have until the 5th day of January, 1929, to deliver said certificate or certificates and no right to receive any dividend or dividends upon said last mentioned shares shall accrue to Second Party until the actual delivery of said certificate or certificates), Second Party agreeing upon the delivery of said certificate or certificates to immediately assign or cause to be assigned to said Patterson-Ballagh Corporation said "Hop-

kins'' Patent, together with those certain applications for Letters Patent (or Patents, if theretofore issued thereunder) numbered and filed as follows, to wit: Serial #77272, filed December 23, 1925, for Drill Pipe Couplings, Serial #111491, filed May 25, 1926, for Drill Pipe Couplings, and Serial #118114, filed May 2, 1927, for Drill Pipe Couplings. First Parties furthermore represent and agree that, in the event of the transfer to Second Party of said Two Hundred and Fifty (250) shares in accordance with the provisions of the option given by this paragraph, said Two Hundred and Fifty (250) shares shall constitute a one-fourth ($\frac{1}{4}$) interest in said corporation. In the event of the exercise of the option given to Second Party by the provisions of this paragraph and not otherwise, except as hereinbefore provided, that certain option given Second Party by paragraph 2 of this agreement shall immediately cease and terminate.

6. First Parties, and each of them, agree that they will continue in the employment of said Patterson-Ballagh Corporation and serve in executive capacities in connection with the business and affairs of said corporation for a period of not less than Two (2) years from the date hereof and at salaries not exceeding the rate of salaries now being paid them by said corporation for services rendered by them to said corporation and that they will cause the business of said corporation to be carried on in the same orderly and businesslike manner as at the present time. First Parties furthermore agree that so long as Second Party has

any right or rights under either paragraph 2 or paragraph 5 hereof, to purchase additional shares of the stock of said Patterson-Ballagh Corporation or in the event of the exercise by Second Party of either the option contained in said paragraph 2 or the option contained in said paragraph 5 hereof, First Parties will prevent said Patterson-Ballagh Corporation from declaring any dividends excepting out of the net profits of the business accruing subsequent to the date hereof and will prevent said Patterson-Ballagh Corporation from transferring any of its assets excepting in the ordinary and normal carrying on of its business and excepting in the declaration of dividends as aforesaid, provided, however, that this paragraph shall not be construed to in any manner prejudice the rights of Second Party as the owner of the Two Hundred and Fifty (250) shares of the capital stock of said Patterson-Ballagh Corporation as contemplated by paragraph 1 of this agreement.

7. Second Party agrees that so long as First Parties or their heirs shall own at least one-half ($1/2$) of the total issued and outstanding capital stock of the Patterson-Ballagh Corporation they shall have, and are hereby given, the right to elect and maintain in office a majority of the Board of Directors of said corporation and First Parties agree that Second Party so long as it owns any issued or outstanding capital stock of said corporation shall have the right to elect and maintain in office at least one director of said corporation, the parties hereto agreeing that before any of said par-

ties shall transfer any of the capital stock of said Patterson Ballagh Corporation to any party or parties other than the parties hereto, such party or parties so desiring to transfer such capital stock, shall offer such capital stock to the other party or parties hereto, upon terms as favorable as such party or parties so desiring to sell such capital stock are able to obtain from any outside party or parties, provided, however, that nothing in this paragraph contained, shall prevent either of the First Parties hereto or his heirs from transferring any of said shares to the other of the First Parties hereto or his heirs. Such party or parties hereto to whom such offer is so made shall have a period of Ninety (90) days in which to accept or reject such offer.

8. The covenants and agreements of the parties hereto as hereinbefore contained shall enure to and bind the heirs, executors, administrators and assigns of the respective parties hereto.

In Witness Whereof, the First Parties, each for himself, and Second Party by its officers thereunto authorized have set their hands and seals this 20th day of September, 1928.

(Signed) C. L. PATTERSON

(Signed) J. C. BALLAGH

Parties of the First Part

BYRON JACKSON PUMP CO.

(Signed) By ROBT. SCHURMAN

H. J. ELLEN

Secy.

[Endorsed]: Filed July 2, 1942.

Mr. Lamont: Attached to the complaint are three exhibits. The first is an exhibit dated August 5, 1941, a demand on the board of directors of Patterson-Ballagh to take some proceedings against the defendants.

Mr. Bednar: What date was that?

Mr. Lamont: That is August 5, 1941. I have the registry receipt, and that was sent to each of the other directors.

Mr. Bednar: Can we look at it during the noon hour?

Mr. Lamont: Surely. Also I would like to have you stipulate to Exhibit B—this may be admitted in the answer—a letter of August 8, 1941, written by Mr. Dulin to Mr. Miller, as president, urging him to take action.

Then Exhibit C was a notice to all the stockholders and a demand upon the majority stockholders to take some action. I am perfectly willing to have you check them, and if you find them—There is another matter at this time, before the noon recess, that you will probably stipulate to. There is named as a stockholder in the answer the Highland Investment Company. As a matter of fact, that was a company entirely owned by Mr. Ballagh and his wife, was it not?

Mr. Bednar: I think so.

Mr. Lamont: In other words, during the time this litigation concerns itself with Byron Jackson Company owned 250 shares, and Mr. Miller owned 375 shares, and Mr. Ballagh, either in his own name or through Highland Investment Corporation,

owned 375 shares, which made up a total of 1,000 shares?

Mr. Bednar: That is correct.

Mr. Lamont: That is all of my documentary evidence. Shall I continue with the oral evidence now?

The Court: No. We will wait until two o'clock. The court will stand at recess until two o'clock.

(Thereupon, a recess was taken until 2:00 o'clock, p. m., of the same date.) [36]

Los Angeles, California

Thursday, July 2, 1942

2:00 o'Clock P. M.

The Court: You may proceed, gentlemen.

Mr. Lamont: I asked counsel to stipulate in regard to the serving or the sending of the exhibits to the complaint. Have you looked over these receipts, counsel?

Mr. Bednar: Yes. I examined them, and I will stipulate that Exhibit B attached to the complaint was received by Mr. Miller soon after this date.

Mr. Lamont: That is, August 8, 1941?

Mr. Bednar: That is right. And I will stipulate that Exhibit C attached to the complaint was received by all stockholders shortly after the date it bears.

Mr. Lamont: And that date was August 14, 1941?

Mr. Bednar: Yes.

Mr. Lamont: How about Exhibit A?

Mr. Bednar: You didn't ask about Exhibit A.

Mr. Lamont: Well, I meant to.

Mr. Bednar: In paragraph XI of the answer, I admit that the defendants "received a communication, purportedly from plaintiff, in words and figures as set forth in Exhibit A attached to the complaint."

Mr. Lamont: Can you make the same reply in regard to Mr. Burrell, who is also director, and also Mr. Armington, who is also a director? [37]

Mr. Bednar: Yes.

Mr. Lamont: I think possibly I had better read this to the court. Exhibit A is a demand upon the directors to take some action on behalf of the corporation.

"Byron Jackson Co., a Delaware corporation, and a stockholder in Patterson-Ballagh Corporation at the present time and at all times herein mentioned, hereby makes demand upon you to commence and prosecute a suit in the name of and on behalf of said Patterson-Ballagh Corporation against J. C. Ballagh and D. G. Miller on account of the following facts:

"1. That said Ballagh and one C. L. Patterson, at all times subsequent to September 20, 1928, and up to on or about February 15, 1939, were the principal stockholders of Patterson-Ballagh Corporation, owning and controlling three-fourths of the entire capital stock of said corporation, the remaining one-fourth of such capital stock being owned and controlled by the undersigned; that said Patterson during said time was the president and a director of said Patterson-Ballagh Corporation, and said Ballagh was secretary-treasurer and a di-

rector of said Patterson-Ballagh Corporation, and said Ballagh and said Patterson by said stock ownership controlled, [38] dominated, and directed each and every of the acts of said Patterson-Ballagh Corporation. That on or about February 15, 1939, said Patterson resigned as president and director of said corporation, and the entire stock owned by said Patterson in said Patterson-Ballagh Corporation was sold to one D. G. Miller by said Patterson; said Miller was thereupon elected president and a director of said corporation on said February 15, 1939, and since that date has been and still is the president and a director of said corporation. That since February 15, 1939, the said Ballagh and the said Miller have connived and cooperated in directing the affairs of said Patterson-Ballagh Corporation, and have at all times since said date dominated, controlled, and directed, and still do dominate, control, and direct each and every of the acts and doings of said Patterson-Ballagh Corporation.

“2. That as a part of a scheme and conspiracy said Ballagh and Miller, being in absolute control and domination of said corporation by reason of controlling three-fourths of the capital stock of said corporation and by reason of controlling the board of directors of said corporation, and over the protest of the undersigned, did pay to said Ballagh grossly excessive salaries [39] and compensation for services rendered said corporation, as follows.”

And thereafter there are set forth the same allegations, in effect, as are set forth in the complaint.

Then continuing:

“The undersigned has at no time since February 15, 1939, received any dividends whatsoever from said Patterson-Ballagh Corporation, and the undersigned believes that said excessive salaries and compensation, as hereinbefore set forth, were determined by said Ballagh and said Miller in furtherance of the above-mentioned scheme and conspiracy, and with the purpose and intent of depriving the undersigned of dividends accruing or to accrue to the undersigned from the said Patterson-Ballagh Corporation and that the amounts of said salaries and compensation were neither fairly nor honestly determined by the said Ballagh and said Miller.

“That the undersigned hereby reiterates its demand upon the board of directors of said Patterson-Ballagh Corporation that suit be instituted and prosecuted by said Board in the name of and on behalf of the said corporation to collect from the said Ballagh and said Miller the amount of all excessive salaries and compensation.” [40]

Then Exhibit B is a personal letter by Mr. Dulin, as president of the Byron Jackson Company, to Mr. Miller, as president of the Patterson-Ballagh Corporation, and Exhibit C is a demand, somewhat similar, but much shorter, upon the majority stockholders for some action.

Now, as a part of the minutes I introduced in evidence this morning is the repudiation of a royalty agreement. I put all four agreements in evidence. It is Exhibit A to your answer in the other suit. It is in the minutes, I understand. I thought it was set forth in the minute.

Mr. Bednar: The only letter set forth in the minutes is the letter from Mr. Burrell to Patterson-Ballagh Corporation, advising them of the action.

Mr. Lamont: I will offer this in evidence as Plaintiff's exhibit next in order. It is dated June 29, 1939, directed by Patterson-Ballagh Corporation to Byron Jackson Company. That is the repudiation of the agreement.

Mr. Bednar: It is perfectly agreeable with us for the notice to go in, but I have a right to check it.

Mr. Lamont: Your answer in the other suit sets it forth.

The Clerk: It will be Plaintiff's Exhibit 16.

PLAINTIFF'S EXHIBIT No. 16

June 29, 1939

Byron Jackson Co.
2150 East Slauson Ave.
Los Angeles, California

Gentlemen:

Please be referred to the following agreements:

1. Agreement dated September 20, 1928, between Byron Jackson Pump Company, therein called "Licensor," and Patterson-Ballagh Corporation, therein called "Licensee." We understand you are the successors of Byron Jackson Pump Company.

2. Agreement dated September 20, 1928, between Patterson-Ballagh Corporation, party of the first part, and Byron Jackson Pump Company, as party of the second part.

3. Instrument of assignment dated December 29, 1931, executed by Byron Jackson Company by which the latter sells, assigns, transfers and sets over to C. L. Patterson and J. C. Ballagh an undivided one-half interest in and to Letters Patent No. 1,619,728 (Hopkins patent) and an undivided one-half interest in and to the agreement first above mentioned.

4. Letter Agreement dated December 22, 1931, signed by Byron Jackson Company and approved December 29, 1931, by Patterson-Ballagh Corporation, J. C. Ballagh and C. L. Patterson.

You will please be advised that we hereby renounce and terminate said agreement dated September 20, 1928, first above mentioned; that we repudiate the license purported to be given by said agreement; that we hereby abandon any position as licensee under said agreement; that we hereby renounce any protection of said license agreement and that we hereby refuse to make any further payments as royalties or otherwise for said license or under said agreement, but without prejudice to the foregoing we are ready to pay and will pay royalties accrued and payable to date of receipt of this notice or July 1, 1939, whichever date is later. We do this for the reasons, among others, that the Letters Patent mentioned in said agreement and which are the basis of said agreement and license are, and each is, invalid and void and that there is a failure or lack of consideration for said license and agreement.

You are also advised that Byron Jackson Pump Company and Byron Jackson Company, as successor to Byron Jackson Pump Company, and its or their sub-licensees, are hereby released and discharged of all obligation to purchase from Patterson-Ballagh Corporation rubbers or cushions of any kind or nature used in connection with the manufacture, sale and use of Hopkins joints as set forth in the agreement designated as No. 2 above, and further that the undersigned corporation claims no rights or privileges under the Letter Agreement designated as No. 4 above, or in, to or under the so-called Hopkins patent No. 1,619,728.

This means also that any sub-licensees under agreements of license signed by Byron Jackson Pump Company or Byron Jackson Company and to which the undersigned is a party will not be required by us to purchase from the undersigned and to use only "Patterson-Ballagh Protectors" in the manufacture and sale of cushion joints for rotary drill pipes or for any other purpose, or otherwise be bound by the provisions of said sub-licenses so far as we are concerned. Our action in respect to the agreements designated as No. 2 and No. 4 above is upon the ground, among others, that the patents mentioned and described in any of said agreements are, and each is, invalid and void and that there is a failure and lack of consideration for each and all of the agreements of

license hereby renounced or the performance of which is hereby released and discharged.

Respectfully yours,

PATTERSON-BALLAGH
CORPORATION

By D. G. MILLER

[Endorsed]: Filed July 2, 1942.

Mr. Lamont: Mr. Ballagh, will you take the stand? [41]

J. C. BALLAGH

called as a witness in behalf of the Plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: J. C. Ballagh.

Direct Examination

Q. By Mr. Lamont: Mr. Ballagh, what connection have you with the Patterson-Ballagh Corporation? A. Secretary and treasurer.

Q. How long have you been such?

A. Since 1928.

Q. In other words, since the organization of the company? A. Yes, sir.

Q. Who were the stockholders of the company at that time?

A. C. L. Patterson, Violet Patterson, and J. C. Ballagh.

(Testimony of J. C. Ballagh.)

Q. Violet Patterson is the wife of C. L. Patterson?
A. She is.

Q. And what changes took place in stock ownership of that corporation since that time?

A. Byron Jackson Company bought 125 shares from C. L. Patterson and 125 shares from myself.

Q. And after Byron Jackson bought into the corporation what other changes took place, particularly so far as [42] Mr. Patterson's stock ownership was concerned?

A. Violet Patterson resigned, and Robert Sherman took her place on the board, with a transfer of one share of stock.

Q. I am asking about stock ownership. Mr. Patterson later on sold his shares, did he not?

A. Yes; he sold to Mr. Miller.

Q. On February 15, 1939?
A. 1939.

Q. Along about that time.
A. Yes, sir.

Q. And at that time he resigned from the board, did he not?
A. Yes, sir.

Q. And Mr. Miller took his place on the board?

A. Yes, sir.

Q. What position did Mr. Patterson have with your company?
A. President.

Q. And when Mr. Miller came on was your position changed at all?
A. No.

Q. What position did Mr. Miller take?

A. President.

Q. What business is your company engaged in?
I have particular reference now to the period from

(Testimony of J. C. Ballagh.)

February 15, [43] 1939, to the date of the commencement of this action on September 10, 1941.

A. The manufacture of oil field equipment, especially rubber items.

Q. It was especially a manufacturing business, was it not? A. Yes, sir.

Q. And what did it manufacture?

A. I wonder if I may get the catalog with the price lists. Casing protectors, stabilizers, special lip protectors, drill pipe stabilizers, Kelly sub protectors, installation tools and removal tools, slide plates, installation paste, hydraulic installation equipment, wire line guides, pipe wipers, safety swivel bail bumpers, Kelly wipers, flange grinders, wire line wipers, mud guns, mud gun nozzles, tubing protectors, sucker rod protectors, sucker rod wipers, traveling block bumpers, open hole steel clad tool joint protectors, vibration dampeners, and various mechanical rubber items made for customers to their specifications, and possibly a few other items of minor consequence that I haven't mentioned.

Q. Mr. Ballagh, what is the difference between a protector and a stabilizer?

A. A difference in the diameter and a difference in the length, and a difference in where it is used in the drilling of an oil well. [44]

Q. Well, they are, in effect, the same gadget, are they not, except for the size?

A. Except for their use and their size and length.

Q. What percentage of your business during

(Testimony of J. C. Ballagh.)

that period I just referred to consisted in the selling of protectors and stabilizers?

A. It varied in those three years, and I will have to get the figures, which I have available——

Q. That is perfectly satisfactory.

A. ——to show the volume.

Q. As a matter of fact, you can supply the figures. A. Yes.

Mr. Bednar: We are going to put this in evidence eventually.

Mr. Lamont: Put it in now, if you want to.

Mr. Bednar: All right. Defendants' Exhibit 1.

The Clerk: Defendants' Exhibit A.

Mr. Lamont: May I ask, whom was that prepared by?

Mr. Bednar: Mr. Ballagh.

Q. By Mr. Lamont: Mr. Ballagh, referring to this chart——

The Witness: I will have to have the other one, to get the quantity of protectors. There is another chart that gives that.

Mr. Bednar: Is this the one?

Mr. Lamont: I don't believe I have seen that. You were [45] kind enough to give me a copy of the other one. Referring to this chart, or these two charts—are you going to put this in evidence?

Mr. Bednar: Yes; I will offer this.

The Clerk: Defendants' Exhibit B.

Q. By Mr. Lamont: Referring to these two charts, Exhibit A and Exhibit B, Mr. Ballagh, what percentage of your business during the time that

(Testimony of J. C. Ballagh.)

I have specified consisted in the sale of protectors and stabilizers?

A. In 1931 the gross sales—

Q. I am not asking for 1931.

A. In 1939—I beg your pardon.

Q. 1939, 1940, and 1941.

A. In 1939 the gross sale of protectors and stabilizers was \$261,741.70, from a gross total sale of \$336,527.88. In the year 1940, protectors and stabilizers, gross sales were \$233,758.23, from a total of \$329,621.51. In the year 1941, protector sales, including stabilizers, were \$245,012.22, from a gross total of \$366,420.87.

Q. Mr. Ballagh, will you explain to the court what a protector is?

Mr. Lamont: I don't know whether you are going to put any protectors in evidence here or not.

Mr. Bednar: We have one here.

A. A casing protector is a continuous ring of rubber which has an inside diameter smaller than the inside diameter [46] of the drill pipe on which it is to operate. It is forced over the drill pipe and fuses itself upon the drill pipe by the resilience of the rubber, and in that position has a diameter that is larger than that of the tool joint, and acts as a bearing medium to prevent the wearing or whipping of the tool joint against the casing.

Mr. Lamont: Are you going to put these in evidence?

Mr. Bednar: Just for identification. We have got a lot of these.

(Testimony of J. C. Ballagh.)

Mr. Lamont: I wonder if they could be marked now for identification.

Mr. Bednar: Yes.

Mr. Lamont: The evidence would be more intelligible, I think.

Mr. Bednar: I have got some pictures here.

Mr. Lamont: There are apparently two——

Mr. Bednar: Mr. Ballagh, does that catalog have pictures of the protectors? A. Yes.

Mr. Bednar: I would prefer to offer them.

Mr. Lamont: That is perfectly satisfactory.

Mr. Bednar: You can offer these for identification. I just want to withdraw them at the end of the trial.

Mr. Lamont: Which are you offering as which? I am going to ask for the distinction between the two.

Mr. Bednar: We will offer the products themselves for [47] identification.

Mr. Lamont: How about the larger one in diameter?

Mr. Bednar: That is a non-lip protector. That will be Exhibit C. And the lipped protector will be Exhibit D, both of those for identification. And let us just offer the catalog in evidence.

Mr. Lamont: I am not stipulating to the contents of the catalog, but for the purpose of showing the pictures, that is perfectly satisfactory.

Mr. Bednar: For the purpose of showing the pictures, we will offer the catalog.

(Testimony of J. C. Ballagh.)

The Clerk: That will be Defendants' Exhibit E in evidence.

Q. By Mr. Lamont: What is the distinction, Mr. Ballagh, between the lip protector and the non-lip protector?

A. The non-lip protector is the protector that we made prior to 1939 and 1940, and is a protector that has a recess into the protector itself on the inside diameter, whereas the lip protector has a lip that extends out beyond the protector.

Q. Will you point out to the court where the lip is.

A. The protector that we had been making has a recess, and the new design—

The Court: This is the new one?

A. That is the new design, yes, sir. [48]

Q. By Mr. Lamont: Is there any other distinction between the two, Mr. Ballagh?

A. Not in construction, no, sir.

Q. You have given the figures as to gross sales, apparently, of these two gadgets together?

A. Yes, sir.

Q. What was the next biggest item constituting the gross sales?

A. During 1939 the wire line guide had a gross sale of \$33,525.18.

Q. Out of a total of gross sales of apparently \$336,527.88?

A. Yes, sir.

Q. And how about 1940?

A. In 1940 the wire line guide gross sales were \$32,694.98.

(Testimony of J. C. Ballagh.)

Q. And 1941?

A. In 1941 the drill pipe wipers had a gross sale of \$43,862.20, from the total given.

Q. What was your next largest product in the way of gross sales?

A. In 1939 the drill pipe wipers, where the volume was \$12,296.

Q. How about 1940?

A. In 1940, the drill pipe wipers was \$30,189.50, from the total given. And in 1941 the wire line guide was [49] \$34,996.84, from the total given for that year.

Q. Mr. Dulin points out that probably in this table you have used the term "wipers," and it should have been "wire line guides." You are taking all of that, are you not, from Defendants' Exhibit A?

A. I think I am right on it. I will confirm those figures; I will check them back.

Q. We thought you misspoke.

Mr. Bednar: You are asking which was the next largest in sales, and they differed in 1939 and '40—in 1939 and 1940 the next item was line guides, and in '41 it was pipe wipers.

Mr. Lamont: Let us clear it up in this manner. Practically all of your gross sales during this period consisted of protectors, wire line guides, and pipe wipers; is that not a fact?

A. No. In 1939 we sold \$11,633.33 of swivel protectors.

Q. Out of the total——

(Testimony of J. C. Ballagh.)

A. \$5,983.51 of mud guns, and \$5,426.70 of hydraulic equipment; \$3,294 of tubing protectors; and about \$2,000 of other miscellaneous items.

Q. But the sales of those other articles were minor in comparison with the three that I have mentioned; isn't that true? It is perfectly obvious from the exhibit.

Mr. Bednar: I think the exhibit shows that. [50]

Q. By Mr. Lamont: One further question I would like to ask with regard to these charts. I am not familiar with Exhibit B. Will you explain what that shows.

A. Exhibit B is a graphic illustration of the distribution of our protector sales by those that were installed with a hydraulic machine and those that were sold in which the lip was a part.

Q. In other words, between C and D for identification—that is what I am not certain of.

A. The gross total sales, for instance, in 1940, for example, were divided into Mid-Continent sales, California sales, export and miscellaneous United States sales outside of this area, and I have gone through the files and I have determined that 25 per cent of the sales of all casing protectors in the Mid-Continent were installed with hydraulic machines, 75 per cent in California, and 10 per cent in miscellaneous fields, and none for export.

Q. The term "hydraulic" means the non-lip protector; is that correct? A. No.

Q. That is what I am not clear on.

A. I was trying to illustrate the gross sales of

(Testimony of J. C. Ballagh.)

protectors in terms of the two types sold, the lip protectors, and those are installed by hydraulic methods.

Q. Let me ask you this. Were any of the protectors installed by hydraulic methods lip proectors?

[51]

A. Oh, yes.

Q. But the percentage is not shown here, apparently?

A. No. We have no way of determining for our records as to which lip protectors were installed with a hydraulic machine.

Mr. Bednar: Let us take, for example, Mr. Ballagh, the year 1940, and the column headed "hydraulic." That column includes all protectors, lip and non-lip, does it not? A. Yes.

Mr. Bednar: And a portion of it, the portion of that column shown in blue, for example, 25 per cent in the Mid-Continent and 75 per cent in California, indicates the percentage of all protectors, lip protectors and non-lip protectors, installed by the hydraulic method? A. Yes.

Q. By Mr. Lamont: In other words, in the left-hand column of each of those four columns?

A. The sale of the lip protector and the use of the hydraulic applicator.

Mr. Bednar: Taking the year 1940, and directing your attention to the column headed "Lip Pro"— A. Yes.

Mr. Bednar: You have certain areas there colored in yellow and others in white. I will ask

(Testimony of J. C. Ballagh.)

you whether or not that doesn't mean that of all protectors, both lip and non-lip protectors, installed in 1940, 25 per cent were lip pro- [52] tectors.

A. Yes, sir.

Q. And the white area represents the non-lip protectors? A. Yes, sir.

Mr. Bednar: In other words, the purpose of this chart is to indicate the progress of lip protectors and the use of hydraulic applicators in installing our protectors? A. Yes, sir.

Q. By Mr. Lamont: How else are protectors installed other than by hydraulic applicators?

A. They are installed by the old original manually operated applicator, in which there is no hydraulic power applied.

Q. Mr. Ballagh, where were these protectors and the other articles you have mentioned manufactured?

A. At the Patterson-Ballagh factory at 1900 East 65th Street, Los Angeles.

Q. Were they manufactured any other place?

A. No, sir.

Q. In other words, that was the sole manufacturing establishment?

A. That is true, for protectors.

Q. I believe you did, however, have a repair shop in Houston, was it? A. Yes, sir.

Q. Texas? [53] A. Yes, sir.

Q. And outside of that, apparently all you had were certain sales agencies in which you displayed—

(Testimony of J. C. Ballagh.)

A. We had service stations at a number of points. The manufacturing was done entirely in California, and some assembling done in Houston.

Q. How many employees did you employ during this period of time?

A. During 1939 and 1940 and 1941 the average was slightly over 40.

Q. Slightly over 40? A. Yes, sir.

Q. I believe in your deposition you testified that you ranged from 25 to 40.

A. I did, but I found that I was low by a few.

Q. That included all of your employees?

A. Yes, sir.

Q. During this period did you have any financial problems as far as the company was concerned?

A. No, sir.

Q. During this period did your duties in any way change? Did the work that you did for the company in any way change?

A. I don't believe that they changed materially, except that during 1939 and 1940 I spent more time in the factory, because of Mr. Miller coming into the firm. [54]

Q. Mr. Miller took Mr. Patterson's place, did he not? A. Yes, sir.

Q. He was supposed to carry on Mr. Patterson's duties? A. Yes, sir.

Q. And until he became acquainted with the business, you may have had a few of those duties to perform; is that correct? A. Yes, sir.

Q. Otherwise there was no change?

(Testimony of J. C. Ballagh.)

A. Practically none.

Q. During this period that Mr. Miller worked for the company, did they change in any material respect?

A. He carried on approximately the same duties that Mr. Patterson had.

Q. Did they remain the same through these years?

A. I would say virtually the same, yes, sir.

Q. You said you were secretary and treasurer?

A. Yes, sir.

Q. Did you keep the minutes of the corporation during this period?

A. No. I kept a few notes on them, and Mr. Burrell wrote up the minutes.

Q. But you didn't yourself write up the minutes?

A. No, I didn't.

Q. Did you keep the books? A. No, sir.

[55]

Q. Yourself? A. No, sir.

Q. You had a man to keep the books?

A. Yes, sir.

Q. Were they under your guidance or not?

A. Yes. They were under my office, as secretary and treasurer.

Q. But you didn't keep them yourself?

A. No, sir.

Q. Now, apparently on February 15, 1939, Mr. Miller became a director and president of the company? A. Yes, sir.

Q. How long had you known Mr. Miller?

(Testimony of J. C. Ballagh.)

A. I first met him about 34 years ago. I first met him——

Q. In other words, you have known him for a long time?

A. No. I went to the same college, but it was about 20 years after I had graduated before I saw him again.

Q. How did he happen to buy in the business? Did he go to you or did you go to him?

A. He came to me.

Q. And you put him in touch with Mr. Patterson, apparently? A. Yes, sir.

Q. And he bought out Mr. Patterson's stock?
[56]

A. Yes, sir.

Q. How did you know that Mr. Patterson's stock was for sale?

A. I talked with Mr. Patterson on a number of occasions regarding it.

Q. How did Mr. Miller know that Mr. Patterson's stock was for sale?

A. I introduced Mr. Miller to Mr. Patterson.

Q. Did he know that stock was for sale before he came to you or not? A. Mr. Miller?

Q. Yes. A. No.

Q. Who was Mr. Armington? Apparently he went on the board of directors.

A. Mr. Armington is the man that does our engineering work, engineering and specifications, and assisting in machine design and costs and field service.

(Testimony of J. C. Ballagh.)

Q. How long had he been employed by the company?

A. He has been with us, I think, about 12 years.

Q. Prior to this time?

A. Yes, sir.—about 12 years from now.

Q. How much did you pay him?

Mr. Bednar: When?

Q. By Mr. Lamont: Beginning January 1, 1939.

A. We were paying him \$225 a month for part of his [57] time.

Q. I note from the evidence already introduced that Mr. Burrell became a director of your company on June 27, 1939.

A. Yes.

Q. Who is Mr. Burrell?

A. Mr. Burrell is one of the firm of Musick and Burrell.

Q. Had you employed him prior to that time in any capacity as an attorney?

A. He had worked on a case for Patterson-Ballagh Corporation about six or seven years ago.

Q. Did he have anything to do with putting this transfer of stock through from Patterson to Miller?

A. Yes. He prepared the option.

Q. He was, in effect, the attorney for your company at the time he went on the board?

A. No, not at that time.

Q. But he became such, didn't he?

A. Yes, sir.

Q. And when did he become such?

A. I think two or three months after he went on the board.

(Testimony of J. C. Ballagh.)

Q. Who suggested that Mr. Burrell go on the board? A. I think I did.

Q. Who suggested that Mr. Armington go on the board? [58]

A. I don't remember. It may have been Mr. Elliott, but I can't recall.

Q. Let me ask you this: Prior to your meeting February 15, 1939, did you ever discuss with Mr. Dulin or any representative of the Byron Jackson Company about Mr. Armington going on the board?

A. I don't recall that I did.

Q. I will ask you the same question with regard to Mr. Burrell, as to the meeting of June 27, 1939.

A. I don't recall that I did.

Q. Who outlined the policies of your company?

A. During——

Q. Who did during this period?

A. During 1939?

Q. 1939, 1940, and 1941.

A. They were outlined jointly by Mr. Miller and myself.

Q. Mr. Miller, as president, and you, as secretary?

A. Yes, subject to the action of the board.

Q. On August 22, 1939, apparently your salary was raised, was it not?

A. Apparently so, if it is in those records. I don't remember the date.

Q. That shows on the records, I believe.

Mr. Bednar: That shows in the minutes.

(Testimony of J. C. Ballagh.)

Q. By Mr. Lamont: What had been your salary prior to [59] that time?

A. I will have to look at the minute and that salary record, if I may. On August 15th I drew a salary of \$1,000 a month, I think, according to this.

Q. As a matter of fact, that was a raise, was it not, of \$4,000, payable quarterly? A. Yes, sir.

Q. And, as a matter of fact, you had been drawing that raise before it was approved by the board, had you not, or even presented to the board?

A. Yes, sir.

Q. In other words, you dated that raise back of the board meeting to March 1st of that year; is that not true? A. Yes, sir.

Q. Mr. Dulin was not present at that meeting?

A. No, sir. The minutes show that he was absent on that day.

Q. Before that raise was made, with whom did you discuss the matter of your increase in salary?

A. With Mr. Miller.

Q. With anyone else?

A. I can't recall whether I discussed it with Mr. Armington or not, but I discussed it with Mr. Burrell.

Q. Did you discuss it with Mr. Dulin?

A. No, sir, I don't recall that I did.

Q. Apparently also on March 18, 1940, your salary was [60] raised, was it not?

A. Yes, sir.

Q. What was it raised to?

(Testimony of J. C. Ballagh.)

A. It was raised to \$2,000 a month.

Q. With whom did you discuss that raise prior to that time?

A. Mr. Miller and Mr. Burrell, and I am not sure whether I did with Mr. Armington or not.

Q. Did you discuss it with Mr. Dulin?

A. I don't recall.

Q. You wouldn't say that you did?

A. I wouldn't say that I did.

Q. He was present at that meeting, was he not?

A. Yes.

Q. And voted in the negative with respect to your raise? A. Yes, sir.

Mr. Lamont: At this time I would like to read what the record shows, the corporate minutes, in regard to this resolution increasing the salary to \$2,000 a month:

“Director Dulin stated that he objected most strenuously to the suggested increase and expressed himself as feeling that the same was entirely unwarranted and should not be put into effect under any conditions until the corporation was paying satisfactory dividends to its shareholders.” [61]

Q. Now, Mr. Ballagh, on November 29, 1940, you again increased your salary or paid yourself a bonus, did you not?

A. Additional compensation for the year end.

Q. Additional compensation? A. Yes.

Q. How much did that amount to?

(Testimony of J. C. Ballagh.)

A. \$4,166.66.

Q. And at the same time Mr. Miller increased his compensation? A. Yes, sir.

Q. By how much? A. \$2,750.

Q. Did you discuss either of these items of raises with Mr. Dulin prior to that time?

A. No, sir, I don't recall that I did.

Q. In discussing with Mr. Miller these raises did you discuss with him the profits of the company? A. Yes.

Q. Did you take them into consideration in making these three raises? A. Yes, sir.

Q. As a matter of fact, the profits of the company were increasing in proportion to the raises, were they?

A. The books are explanatory. You have all the statements.

Q. Do you recall at the present time? [62]

A. I don't think they did. I haven't the figures.

Q. Did you discuss that element with Mr. Miller? A. No, sir.

Q. Or Mr. Burrell? A. No.

Q. Do you recall whether or not Mr. Dulin was present during that part of the meeting when you voted yourself that additional compensation or the additional bonus?

Mr. Bednar: The minutes don't indicate that Mr. Dulin was there.

Mr. Lamont: I think that is true, that he was not there. I am asking him, and on his last extra

(Testimony of J. C. Ballagh.)

compensation, whether Mr. Dulin was present at the time the compensation was voted.

The Witness: The minutes show that he was absent.

Q. In the discussions with Mr. Miller and Mr. Burrell and Mr. Armington with regard to increases or extra compensation, did you talk about the non-payment of dividends?

A. I think we did. I can't recall specifically.

Q. Did you take them into consideration in raising your salary?

A. I think they were taken into consideration, yes, sir.

Q. You hadn't paid any dividends since 1938, had you, the summer of 1938?

Mr. Bednar: I object to that as already in evidence. [63] I think the record shows.

Mr. Lamont: I think that is probably true. In the summer of 1938 I think the record showed dividends.

Q. By Mr. Lamont: After the end of June 1939 you paid no more royalties, did you, under your contractual arrangement with Byron Jackson, numbered Exhibit 15? I will show you that.

A. I think in the exhibit there is a list of dividends and the dates and the check numbers, which gives the date of the last check paid.

Q. As a matter of fact, that was in the summer of 1939, was it not?

A. I can tell if you will hand me that dividend

(Testimony of J. C. Ballagh.)

Mr. Bednar: This shows dividends and royalty payments.

Q. By Mr. Lamont: Referring to this chart which I now show you——

Mr. Lamont: Are you going to put that in evidence?

Mr. Bednar: Yes.

Mr. Lamont: I would prefer that you offer it now.

Mr. Bednar: I will offer it now, then.

The Clerk: 'That will be Defendants' Exhibit F in evidence.

Q. By Mr. Lamont: Referring to Defendants' Exhibit F, that was prepared by you, was it not?

A. Yes, sir. [64]

Q. And it shows, does it not, that royalties and dividends stopped short in the middle of 1939; is that not correct?

A. This shows the final payment made prior to January 1, 1940, the exact date of which I haven't got.

Mr. Lamont: Let us get at it this way. I presume you will stipulate that there were no more royalties paid after the serving of notice of cancellation of the contract, and that there were no dividends paid after the middle of 1939?

Mr. Bednar: That is correct.

Q. By Mr. Lamont: How much had you been paying just prior to that time, and by "that time" I mean the summer of 1939, to Byron Jackson, on

(Testimony of J. C. Ballagh.)

account of royalties under the agreement with them?

A. May I have tabulation showing the dividends paid?

Mr. Bednar: I understand you asked about royalties?

Mr. Lamont: Yes, royalties.

The Witness: Royalties.

Mr. Bednar: I am afraid that is not in evidence.

Mr. Lamont: My understanding is that Byron Jackson were paid about \$3,000 a year at that time, prior to that.

A. During 1939, up to and including 7/25, they received a total of \$5,815.75. In the year of 1938 they received \$11,816.25. During 1937 they received \$12,458.75. And during 1936 they received \$9,841.50. Do you wish it [65] prior to that time?

Q. No. As a matter of fact, one-half of each of those sums you have mentioned as being received by Byron Jackson was paid, under the contractual arrangement, to you and Mr. Patterson, was it not?

A. Yes, sir.

Q. Now, on November 29, 1940, you testified as to the raise of your compensation, and also the raise in Mr. Miller's compensation. That is correct, is it not? A. August, 1940?

Q. Yes.

Mr. Bednar: I think you said November, 1940.

Q. By Mr. Lamont: November, 1940—November 29, 1940. A. Yes, sir.

Q. And prior to that time I believe you testified

(Testimony of J. C. Ballagh.)

that you had talked with Mr. Miller in regard to your raise in compensation? A. Yes, sir.

Q. And you had also talked to him prior to that time in regard to his own raise? A. Yes, sir.

Q. As a matter of fact, they went hand in hand, did they not?

Mr. Bednar: I object to that.

Mr. Lamont: He is one of the defendants in the action. [66]

The Court: I know, but "hand in hand"—

Q. By Mr. Lamont: They were considered at the same time and in the same conversation, were they not?

A. During the same period of our discussion, of the conversation.

Q. And put up to the directors of the same board? A. Yes, sir.

Q. Now, why didn't you pay dividends after the summer of 1939?

A. Mr. Miller said that he would not approve any dividends as long as we had a suit pending in which it was necessary for us to set up a fund for the payment of potential loss of the suit we were having with Byron Jackson.

Q. In other words, you set up a reserve?

A. Yes, sir; we set up a reserve. And also because things were getting critical in the war, and we were planning on doing some expansion, trying to get into war work, and he said he didn't consider our cash on hand adequate to pay dividends.

(Testimony of J. C. Ballagh.)

Q. How much of a reserve did you set up from then on?

A. We set up the full sum of the amount that was potentially payable under the contract in cash.

Q. How much was that?

A. I think it was approximately \$23,000, up to the first of 1942.

Q. How much on a yearly basis? [67]

A. I would have to get it year by year.

Mr. Bednar: The Pennington audits show this, that on March 29, 1940, Mr. Pennington's report indicates that at that time, for the preceding part, or for the last half, rather, of 1939, a reserve amounting to \$4,799.25 was set up. Mr. Pennington's report dated February 10, 1941, indicates that for the year 1940 a reserve of \$13,581.75 was set up. Mr. Pennington's report dated December 29, 1941, indicates that for the year 1941 a reserve was set up of \$22,469.25. And I think that that reserve accumulates from year to year. That last figure is the total reserve as of November 30, 1941.

Mr. Lamont: How much is that figure?

Mr. Bednar: \$22,469.25.

Q. By Mr. Lamont: Mr. Ballagh, after setting up these reserves, there were still profits left, were there not, which could have been paid out in dividends? A. Yes, sir.

Q. In raising your salary during this period did you take into consideration the possibility of war? A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. In the same way you took into consideration the payment of dividends or the non-payment of dividends? A. Yes, sir.

Q. But you raised the salaries, but you didn't pay [68] dividends; isn't that correct?

A. Yes, sir.

Q. In the monthly statement which was introduced in evidence, did you set up any reserve for taxes?

A. I don't think there were in the monthly statements. I can't recall, but I don't think we set up a monthly tax reserve.

Q. As a matter of fact, there appears in your minutes, does there not, a resolution to the effect that monthly reserves should have been set up by the treasurer of the company for taxes?

Mr. Bednar: The minutes speak for themselves. We will see. Could you point out that resolution to me?

(Discussion between counsel off the record.)

Q. By Mr. Lamont: Let me ask you this, Mr. Ballagh. The complaint has attached to it three exhibits, a demand upon the directors that the company take action against you and Mr. Miller. You recall that demand, do you not? A. Yes, sir.

Q. What did you do when you received that demand? A. Sent it to Mr. Burrell.

Q. Did you do anything else?

A. I can't recall.

(Testimony of J. C. Ballagh.)

Q. You didn't hold any directors meeting, did you?

A. Not that I recall—none except what is shown on our minutes. [69]

Q. Were you familiar with the letter that Mr. Dulin wrote to Mr. Miller, as president of the company, attached to the complaint as Exhibit A?

A. I think I saw it, yes, sir.

Q. What was done, if anything, upon receipt of that letter?

A. I think Mr. Miller sent it to Mr. Burrell.

Q. That is all that you know that was done?

A. Yes, sir.

Q. Exhibit B to the complaint is a demand upon the stockholders. Upon receipt of that demand what action did either you or Mr. Miller take?

A. I sent mine to Mr. Burrell.

Q. Did you take any further action?

A. No, sir.

Q. Did you discuss this matter with Mr. Burrell at that time? A. I think I did, yes.

Q. But you don't recall of ever having discussed it in any meeting of the board of directors?

A. I don't recall that I did.

Mr. Lamont: I will refer to the minutes of September 27, 1938. Apparently they contain this statement:

“The next question was the matter of setting aside monthly reserves to cover the estimated income tax payments. It was moved by Mr. Elliot, [70] seconded by Mr. Rennie, that cash

(Testimony of J. C. Ballagh.)

equal to the book reserve be deposited in the fund account at the Security First National Bank to cover the estimated income tax liability on monthly earnings. Motion unanimously carried."

Take the witness.

Mr. Bednar: No cross examination. [71]

Mr. Lamont: Mr. Miller, will you take the stand?

The Court: We might have a brief recess before Mr. Miller is sworn.

(Short recess.)

Mr. Lamont: I would like to put Mr. Ballagh back on the stand for a few more questions.

The Court: Very well.

J. C. BALLAGH, recalled

Direct Examination, resumed

By Mr. Lamont:

Q. Mr. Ballagh, during the course of your deposition taken in this matter, you testified, I believe, that during this period, I believe 1939, through 1939, 1940 and up to September 10, 1941, you did some work in regard to inventions; is that correct?

A. Yes, sir.

Q. As to which particular products was that work?

A. May I have the price list? On direct inven-

(Testimony of J. C. Ballagh.)

tions of mine I worked on the pipe wipers, tubing protectors, and box style sucker rod protectors, on the lip protectors, on the hydraulic applicators, on the Kelly wipers, mud gun, manifolds, on the traveling block bumper, on the vibration damper, being the main items during that period.

Q. In giving that testimony I take it you are referring to Defendants' A? [72]

A. Yes, sir.

Q. That is correct, is it not? A. Yes, sir.

Q. Now, apparently during the year 1939 the only protectors you sold were without lips; that is correct, is it not?

A. Yes, sir, except there was one experimental order sold in 1939 in the Mid-Continent. I didn't show it here, because it would hardly show on here. It was our first experimental order, and I think nothing except a few scattered experimental ones were installed then.

Q. When did you start working on that device?

A. On the lip protector?

Q. Yes. A. I think during 1939.

Q. You don't recall about what time?

A. It was during the summer or fall of 1939.

Q. But the only difference between the protectors theretofore manufactured and this lip protector was as you pointed out to the Court in your prior testimony; that is true, is it not?

A. Yes, sir, the construction.

Q. Did you patent this protector?

A. No, sir, not yet.

(Testimony of J. C. Ballagh.)

Q. Have you filed any application to patent it?

A. Yes, sir. [73]

Q. When did you file that?

A. That was filed in September, 1940.

Q. Have you a copy of your application?

A. Yes, sir.

Q. May I see it? A. Yes, sir.

Q. Referring to the diagram which you have handed to me, and referring to the figures numbered 1, 2, 3 and 4, will you explain to the Court what the distinction between those figures is?

A. I can best illustrate it in connection with the protector itself. This is the old original protector, as it has been made for about the past thirteen years, and it has a groove in each end on the inside diameter, so that they can be installed. The lip protector has no groove, and has a lip extending out from the protector, so that when it is installed on the pipe it has no recess; it has no recess in the space between the protector and the pipe.

Q. Mr. Ballagh, has there been any Patent Office action on that application?

A. Not as far as I know.

Q. As far as you know, no claims have been allowed?

A. As far as I know, not to date. It is in the hands of Lyon & Lyon, who are prosecuting it.

Q. During that period of time did you give gross profits derived by your company from the sale of protectors [74] and stabilizers, making no distinction between lip protectors and the other type?

(Testimony of J. C. Ballagh.)

Mr. Bednar: You mean cost of manufacture?

Mr. Lamont: No—gross profits from both these devices during that period of time, 1939, 1940 and 1941.

Mr. Bednar: I object to the question until you define what you mean by “gross profits.” Do you mean the sales price, less the cost of manufacturing the article itself?

Mr. Lamont: Let us have him give that first.

The Witness: What is the question?

Mr. Bednar: What is the average sale price on these protectors and what is the approximate cost of manufacture?

A. It would average, of all sizes, about \$8.00, as a rough estimate. There are more than 100 different sizes, and it is rather a rough estimate as to the average of all sizes.

Q. How about the 4½-inch size?

Mr. Bednar: Is that \$8.00 figure the cost or the selling price?

A. That is the average selling price.

Q. By Mr. Lamont: What is the cost of manufacturing?

A. Labor and material on that would be approximately \$2.00.

Q. You gave the average. Now, will you confine yourself to the 4½-inch protector?

A. The 4½—we have nine sizes of 4½ protectors, and [75] we have about the same number of sizes of—

Q. Well, what is the average for your 4½?

(Testimony of J. C. Ballagh.)

A. They run from \$10 to \$19, list, with a deduction of 40 percent in California.

Q. Which are principally sold, which items? I believe in your price list you distinguish by code names, and also by weight in pounds.

A. The protector that sells for \$13.50 would probably have the most sale in quantity in the Mid-Continent area, and in the California area the protector that lists at \$10.50 would be the most popular size; and for export the most sold size in 4½ would be one that lists at \$8.00.

Q. How does the manufacturing cost vary as to those items you have just mentioned?

A. Well, based on poundage, they all run about the same per pound. There is quite a variation in weights in the various sizes, and the pound selling price would be fairly close.

Q. Are there any competitive devices on the market?

A. Yes, sir.

Q. There were during this period?

A. Yes, sir.

Q. What were they?

A. There was a protector called the Bettis Protector, made by the Bettis Rubber Company. There was a protector called the Grisly Protector, made by the Grisly Manufacturing [76] Company. There was a protector called the O. K. Protector, made in Houston, by the O. K. Manufacturing Company. And there was a protector made in Oklahoma by a man by the name of Howard. I think he calls it the

(Testimony of J. C. Ballagh.)

Howard Protector, if I am not mistaken. It is a small company.

Q. In the main, how do these competitors' devices differ from the protectors and the stabilizers manufactured by the Patterson-Ballagh Company?

A. Well, they are similar in their construction. None of them, however, have the lip.

Q. Now, Mr. Ballagh, coming to your Exhibit A, apparently, from looking at that exhibit, you are claiming some invention as to pipe wipers?

A. Yes, sir.

Q. What was that invention?

Mr. Bednar: I have a copy of the patent.

A. I have one of the devices here. I will illustrate.

Q. When did you start your work in regard to this pipe wiper patent?

A. In 1938 I started working on the design.

Q. When did you first start to sell this device?

A. I think our first sales were made in 1938.

Mr. Lamont: I would like to offer this patent in evidence. If you are going to put this elaborate chart in evidence, will you do it at the present time?

Mr. Bednar: Yes, we will. [77]

A. The first sales were made in 1938.

Mr. Bednar: Can we get a number on these exhibits before we go any further?

The Court: This chart will be Defendants' Exhibit G.

(Testimony of J. C. Ballagh.)

Mr. Bednar: The pipe wiper patent is what?

The Clerk: May I mark that, please? That patent will be Defendants' Exhibit H.

The Witness: Pardon me. I think I told you 1938. The first sales on that were during 1939, according to this record, instead of 1938.

Q. By Mr. Lamont: This chart, Defendants' Exhibit G, would show that?

A. Yes, sir. There may have been one or two experimental ones prior to that.

Q. Prior to 1939? A. Yes.

Mr. Bednar: I would like to have him explain what a pipe wiper is.

Mr. Lamont: I would be very glad to have him do it.

A. I have a small model in my portfolio. It is in one of the pockets. This full size is rather heavy. This is a wiper that wipes the mud from a drill pipe in an oil well or oil from tubing from a pumping well. It is put over the drill pipe and beneath the rotary table, and the drill pipe is pulled on up through, and it wipes the mud off. It is reenforced with steel, covered with rubber, made [78] with various sizes of holes to fit various size drill pipe or tubing.

Mr. Bednar: Do you have different sized pipe wipers?

A. Different size pipe wipers. There are six different sizes of pipe wipers.

Q. By Mr. Lamont: During this period, Mr.

(Testimony of J. C. Ballagh.)

Ballagh, were there any competitive devices on the market?

A. Yes, sir.

Q. What were they?

A. One was called the Meaderis Dri-Pipe Wiper.

Q. Any others?

A. As far as I know, that was the only one on the market at that time.

Q. Was that on the market before your device went on the market or not?

A. As far as I know, not. I never saw one until a considerable time after we had started marketing ours.

Q. How did it differ from your device?

A. Well, they made three or four designs, and at the present time, as far as I know, there is none being sold. I haven't seen them for at least a year. Theirs was made without any reenforcing, just canvas on the edge, and the first ones they had made had an aluminum housing on the outside, and then they had a brass housing, and then they went to the canvas webbing, and, as far as I know, they have discontinued the manufacture of them at the present time.

[79]

Mr. Lamont: I think that will be all. You have no cross examination?

Mr. Bednar: No cross examination.

Mr. Lamont: All right. Mr. Miller, will you take the stand? [80]

DE MONT G. MILLER

called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your name.

The Witness: De Mont George Miller.

Direct Examination

By Mr. Lamont:

Q. Mr. Miller, what position do you hold with Patterson-Ballagh Corporation?

1 A. President and manager of the corporation.

Q. How long have you been such?

A. Since February 15, 1939.

Q. What work did you carry on as such president and manager?

A. Manager of the factory, looked after the financial end of it, and purchasing.

Q. Did you do any inventing?

A. Yes, sir.

Q. What items?

A. I received a patent on two different line wipers.

Q. Anything else?

A. I believe I received two claims on a steel clad open hole stabilizer, steel clad protector; they call it a steel clad protector.

Q. Protector? [81]

A. Steel clad protector.

Q. Any others?

A. I have just put in an application on a rod protector, rod style, we call it.

Q. Any others?

(Testimony of DeMont G. Miller.)

A. And an affidavit on a rod wiper.

Q. Any others? A. That is all.

Q. Which of these items, if any, have been patented? A. The two line wipers.

Q. What? A. Line wipers.

Q. When did that patent issue?

Mr. Bednar: I have a copy of it.

A. He has got it.

Q. By Mr. Lamont: Have any other of these items been patented?

A. We haven't received the patents yet.

Q. Have you filed applications on the others?

A. I filed an application on the steel clad. That is the one I stated we received a couple of claims on. We have been notified by the attorneys that they have been allowed two claims.

Q. How about the rod style?

A. An application has just been written up by the attorneys. It hasn't been filed yet. [82]

Q. How about the rod wipers?

A. There has been only an affidavit put in.

Mr. Lamont: I would like to offer in evidence the patent on the line wiping device.

Mr. Bednar: There are two patents.

Mr. Lamont: Did you give me both of them?

Mr. Bednar: Yes.

Mr. Lamont: I will offer both of them as one exhibit, A and B.

The Clerk: They will be Plaintiff's Exhibits 17-A and 17-B.

(Testimony of DeMont G. Miller.)

Q. By Mr. Lamont: When did you start working on the line wipers?

A. Approximately a year before the patents issued.

Q. How about the steel clad protectors?

A. The patent attorneys have had that—at least, we filed application probably a year ago.

Q. When did you start your work?

A. I beg your pardon?

Q. When did you start in working on that device? A. Probably two years ago.

Q. How about the rod style protector?

A. I made an affidavit on that just about a year ago.

Q. How long prior to that time did you start working on it?

A. Probably a few weeks. [83]

Q. How about the rod wiper?

A. That is a guess, too. I could find out those dates from the affidavits, if you would like to have them.

Q. How long ago was that?

A. Probably a year ago.

Q. Coming to the line wipers, were there, during this period, any competitive devices on the market?

A. Yes, sir.

Q. What were they?

A. I only know of one, the Ratigan.

Q. How did that differ from your device?

(Testimony of DeMont G. Miller.)

Mr. Bednar: You might have him explain this with the model.

Mr. Lamont: All right.

A. This device is made in the form of a propeller with a lot of holes through it. The hole starts on each end, and the device is wrapped around the line, and, because of the resilience of the rubber it continues to stay tight and tightens up as you pull on it, until a hole is worn through bigger than the line, and then they buy another one. This particular device is so designed that whatever is on the end of it—a pump or tool joint—when it hits it it pops off by itself. Do you want me to explain this Ratigan device?

Mr. Lamont: Mr. Bednar, you have been very liberal in supplying charts. Have you any charts which show the [84] percentage of sales of these articles compared with the gross sales of the company?

Mr. Bednar: On Defendants' Exhibit A the yellow refers to small sales.

Mr. Lamont: In other words, it would appear, then, in 1939, that there were no sales of any of these articles?

Mr. Bednar: If so, they were inconsequential and wouldn't show on the chart.

Mr. Lamont: In 1940, the total would be how much?

Mr. Bednar: Well, as I read it, line wiper refills, \$162.04; wire line wipers, \$1952.40; Universal sucker rod wipers, \$174.50. In 1941 there were sales of the open hole tool joint protector of \$597.29; the wire

(Testimony of DeMont G. Miller.)

line wiper refills \$3038.40; wire line wipers, \$2250.60; and Universal rod wipers, \$239.70.

Mr. Lamont: You have been reading, Counsel, apparently from Defendants' Exhibit A?

Mr. Bednar: Yes. We have one of the steel clad protectors.

Mr. Lamont: That is perfectly satisfactory.

Mr. Bednar: Before we go into this, you might explain the other wire line wiper.

Mr. Lamont: Just before that, referring to the figures you gave, they were out of a total of \$336,527 for the year 1939, and \$329,621 for the year 1940; and for the year 1941, \$366,420? [85]

Mr. Bednar: The chart shows that. Mr. Miller, will you explain your other wire line wiper?

A. There were objections to price in the first line wiper by some of the customers, so this one was designed, with a similar device as to core, with a steel shield designed so that when the pump barrel, or whatever hit it, would release these springs on the side, and it had the additional advantage of a refill of rubbers with less weight per pound, so that the cost would be less, and it had the further advantage that you could get further adjustment in tightening up on the line after the hole had worn as large as the line.

Mr. Bednar: This catalog, which I believe is in evidence, contains illustrations of these two wire line wipers. Will you explain the steel clad protectors?

A. When I went with the corporation there had been experiments made in stabilizers, which are over-

(Testimony of DeMont G. Miller.)

sized protectors, placed on the drill pipe in the open hole, and the wear was very considerable, on account of rock and gravel; in other words, it wasn't protected like a protector would be, running inside of a pipe. Experience had shown that protectors in the pipe would last for many thousand feet of drilling before they wear out, because they rub against a smooth wall, but in the open hole they would not last very long. So I designed a steel shield that acted the same as the outside casing and also acted as a bearing. [86] Many times the drill pipe hits the side of the hole, the shell stops, and the rubber revolves inside of the casing.

Mr. Bednar: In other words, whenever there is a casing in the well, generally the rubber protectors are used alone, but whenever there is no casing, then the steel clad protector is used; is that correct?

A. That is the location that the steel clad protector is designed for. These are made in several sizes.

Q. By Mr. Lamont: Mr. Miller, you joined the Patterson-Ballagh Company February 15, 1939, did you not? A. Yes, sir.

Q. What had you been doing prior to that time?

A. How long prior?

Q. Well, let us start immediately prior.

A. I was not working.

Q. For how long a period were you not working?

A. Four of five months.

Q. Prior to that time, that four or five months interval, what work were you doing?

(Testimony of DeMont G. Miller.)

A. Manager of the Sterling Pump Corporation.

Q. Where was that located?

A. Stockton, California.

Q. How long were you employed by them?

A. About two years and a half.

A. In what capacity? A. Manager. [87]

Q. What was your compensation for that work?

Mr. Bednar: Just a minute. At this time I wish to object, on the ground that the question involved here is not what this man was worth to another corporation, but what he was worth to this corporation, and it is incompetent, irrelevant and immaterial.

Mr. Lamont: My answer to that is that precisely that evidence was taken into consideration in the case of Davis vs. Davis Company, a New Jersey case, 52 Atlantic, 715 at page 718, and in a recent work which has just come off the press by George Thomas Washington, entitled, "Competent Executive Compensation." That gentleman is Professor of law at Cornell University Law School, and a member of the New York Bar and the Federal Bar, and that is laid down as one of the——

The Court: I will admit the evidence, subject to the objection, and then I can look into the authorities.

Mr. Lamont: Will you answer, please?

A. \$500 a month.

Q. \$500 a month? A. Yes.

Q. Prior to that time where had you been working?

A. I think approximately ten years as general manager of the Johnston Pump Company.

(Testimony of DeMont G. Miller.)

Q. In what capacity?

A. General manager. [88]

Q. Where was that located?

A. 2324 East 41st Street, Los Angeles.

Q. What did you receive as compensation there?

Mr. Bednar: The same objection, your Honor.

The Court: The same ruling.

A. My salary varied over that period of time.

Q. Between what limits?

A. As I remember, from \$500 to \$800 a month.

Q. How did you come to join the Patterson-Bal-
lagh Company?

A. Well, I was taking new work, and I met Mr. Ballagh, and he told me that there might be a chance to buy that concern.

Q. You had known Mr. Ballagh for a great many years, hadn't you? A. Yes, sir.

Q. When did you first meet Mr. Burrell?

A. At the time the option for the sale was drawn up.

Q. As a matter of fact, he put that deal through for you, did he not?

Mr. Bednar: I object to that as calling for a conclusion.

Q. By Mr. Lamont: What part, if any, did he take in connection with the sale of the stock by Patterson to you?

A. He wrote up the option for Patterson and Ballagh.

(Testimony of DeMont G. Miller.)

Q. You had him present, did you not at the meeting [89] before the directors?

A. That is right.

Q. Who outlined the policies of Patterson-Ballagh after you became a part of that company?

A. I did, within my realm as president, and with the approval of the Board.

Q. And who outlined the balance of the policies—Mr. Ballagh?

A. In his department.

Q. From the time you entered the employ of the company up until the time of the beginning of the suit, was the nature of your work which you did for the company changed? A. No, sir.

Q. Prior to these raises in your compensation and that of Mr. Ballagh, I understand the raises took place by a resolution of the Board of Directors on August 22, 1939, March 18, 1940, and November 29, 1940—prior to those raises did you have any conversation with Mr. Dulin? A. No, sir.

Q. I was going to add, as to this particular thing?

A. No, sir.

Q. But you did talk those raises over with Mr. Ballagh? A. Yes, sir.

Q. I am including both in the one question. Did you talk them over with Mr. Burrell? [90]

A. I probably did.

Q. Do you have any definite recollection of it?

A. I have a definite recollection of talking with him, but I don't remember any definite one.

Q. Any what?

(Testimony of DeMont G. Miller.)

A. Any definite one time.

Q. How about Mr. Armington?

A. I don't remember talking with him.

Q. In making these raises, what elements did you consider?

A. The financial state the business was in.

Q. Anything else?

A. The value that the corporation was receiving from the men that were getting the raises.

Q. Anything else?

A. That is all I know about.

Q. Did you consider the fact that you were not paying any dividends, or hadn't paid any dividends since the middle of 1938?

A. Yes, sir.

Q. When you first became connected with this company you apparently looked over the business of the company?

A. Yes, sir.

Q. And it was you, was it not, that recommended that the company no longer pay any royalties to Byron Jackson?

A. At what time? [91]

Q. Just prior to the time they stopped paying royalties, which was the middle of 1939?

A. Yes, sir.

Q. June 30th?

A. Yes, sir.

Q. Was it on your recommendation that the company ceased paying dividends from then on?

A. Yes, sir.

Q. Did you ever discuss with Mr. Dulan the non-

(Testimony of DeMont G. Miller.)

payment of royalties and the non-payment of dividends? A. Not to my knowledge.

Q. You didn't consult with him as to either action? A. No, sir.

Q. What were your reasons for not paying dividends?

A. At the time the matter came up we were contemplating expansion, and, as the minutes show, we did buy a couple of lots.

Q. You didn't carry that planned expansion far, did you?

A. We didn't carry it through at all. We bought a couple of presses shortly prior to that time.

Q. You gave up the idea; isn't that a fact?

A. Yes, sir.

Q. But you didn't start paying dividends upon giving up the idea of plant expansion?

A. The war was coming on at the same time, and also we [92-93] were contemplating saving the working capital, that it was necessary for this suit that Byron Jackson had with us on royalties, which we did do.

Q. Your earnings were sufficient over and above those reserves, were they not, for the payment of dividends?

A. Yes, sir, but we were on a cash basis. We don't use and credit, and it was necessary to have that much capital, in my opinion, in the corporation.

Q. Did you take into consideration the same elements you mentioned with regard to the non-

(Testimony of DeMont G. Miller.)

payment of dividends in regard to your salary raises?

A. The salary raises were made for a different reason.

Q. Did you consider those elements at all in making those raises? A. Somewhat.

Q. Well, to what extent?

A. The element of the financial condition of the institution.

Q. Is that the only extent to which those matters were taken into consideration? A. Yes, sir.

Q. The minutes apparently show that on March 18, 1940, both your salary and the salary of Mr. Ballagh were raised. That is correct, is it not?

A. Yes, sir.

Q. Did you discuss the raising of those salaries with [94] Mr. Ballagh at the same time, that is, your raise as well as his raise? A. Yes, sir.

Q. And they were presented to the meeting at the same time, were they not? A. Yes, sir.

Mr. Lamont: Take the witness.

Cross Examination

By Mr. Bednar:

Q. Mr. Miller, when you bought the shares from Mr. Patterson did Mr. Burrell represent you?

A. No, sir.

Q. Or did you have another attorney?

A. I had no attorney.

(Testimony of DeMont G. Miller.)

Q. You mentioned plant expansion. What was the nature of that proposed expansion?

A. Prior to this conversation regarding plant expansion, our business was greater than our capacity on the day shift, and we were figuring on enlarging the factory and putting more presses in.

Q. When was the plant expansion dropped, approximately?

A. I can't give you the date. It was after the war started, though.

Q. After the United States was in the war?

A. No; before that. [95]

Mr. Bednar: That is all at this time.

Mr. Lamont: That is all. At this time I have some charts of my own to offer. I would like to offer them in evidence, subject to your right to check them.

Mr. Bednar: They may go in, and I will examine them later.

The Clerk: As a plaintiff's exhibit?

Mr. Lamont: Yes.

The Clerk: Do you want one exhibit number on those?

Mr. Lamont: One exhibit number will be perfectly satisfactory.

The Clerk: They will be Plaintiff's Exhibit 18.

Mr. Lamont: I will get them in order. It will be 18-A—

The Clerk: Instead of 18, it will be 18-A.

Mr. Lamont: B?

The Clerk: 18-B——

Mr. Lamont: 18-C and 18-D?

The Clerk: 18-C and 18-D.

Mr. Lamont: These Exhibits 18A-B-C-D I will hand to the Court.

Mr. Bednar: Have you compared these?

Mr. Lamont: Mr. Chesnut compared them, and if there is any doubt about what they mean Mr. Chesnut will be very glad to explain them to the Court.

Mr. Bednar: I want to check these figures. [96]

Mr. Lamont: That is subject to your right to check. There is one thing I want to make clear, and that is that these exhibits, as far as executive salaries are concerned, only refer to these two gentlemen, the defendants in this action. Mr. Chesnut tells me that the only thing on the statement is the list of royalties, which was checked. May I ask when the Court intends to adjourn, what time?

The Court: Well, now I think will be a good time.

Mr. Lamont: That will be very satisfactory to me. I only have two more witnesses, and the others will be short.

The Court: We will recess until 10:00 o'clock in the morning.

(An adjournment was taken until Friday, July 3, 1942, at 10:00 o'clock a.m.) [97]

Los Angeles, California,

Friday, July 3, 1942.

10:00 A. M.

Mr. Lamont: Mr. Dulin, will you take the stand?

E. S. DULIN,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: Please state your full name.

The Witness: E. S. Dulin.

Direct Examination

By Mr. Lamont:

Q. Mr. Dulin, in what capacity are you connected with Byron Jackson, plaintiff in this case?

A. I am president of Byron Jackson Company.

Q. How long have you been such?

A. Since 1929.

Q. What connection have you had during that period with Patterson-Ballagh?

A. I have been a director since 1930.

Q. And still are? A. And I still am.

Q. In bringing this suit with whom did you discuss where it should be brought, whether in the State Court or the Federal Court?

A. With our attorneys, Chickering & Gregory, [98] particularly yourself, and also with our other attorneys, Lyon & Lyon.

Q. In other words, your conversations, then, were limited to your attorneys?

(Testimony of E. S. Dulin.)

A. And to certain officers and members of the Byron Jackson Company.

Q. The complaint has attached to it three exhibits. You probably recall the demand upon the directors of Patterson-Ballagh, and a letter written by you to Mr. Miller, and a demand upon the other stockholders to take some action in this matter against Messrs. Miller and Ballagh? You recall that, do you? A. I do.

Q. After those different communications were sent to the respective parties, was any action taken by Patterson-Ballagh?

A. Not to my knowledge.

Q. You know of no action having been brought?

A. No.

Q. In 1938 you will recall that the salaries of Messrs. Patterson and Ballagh were raised about, I believe, \$1500?

Mr. Bednar: When?

Mr. Lamont: In 1938.

A. Yes. For the exact date and amount I would like to refer to these minutes that are in evidence here. [99]

Q. I now refer you to volume 5 of the minute book of the Patterson-Ballagh Corporation, so that you may refresh your recollection.

A. Yes. That was on October 13, 1938, and the minutes truly reflect what transpired as far as this matter was concerned, in which Mr. Patterson's and Mr. Ballagh's salaries were increased to \$1500 per

(Testimony of E. S. Dulin.)

month, at that meeting. It was on a basis of—a month to month basis.

Q. Were you agreeable to that increase, Mr. Dulin? A. I was.

Q. Why?

A. At that time they had been showing certain progress and——

Mr. Bednar: Just a moment. I object to the question as incompetent, irrelevant and immaterial.

The Court: You may answer.

Mr. Lamont: Go ahead. You had better read the witness the part of his answer already given.

(Answer read by the reporter.)

A. And there had been quite a few conflicts between Mr. Patterson and Mr. Ballagh prior to that time, and in looking out for the best interests of the company they had agreed to work on a little more harmonious basis, and, in addition, to set up a procedure that I thought would provide for more efficient operation of the company.

Q. Will you refer to the meeting of March 18, 1940? [100]

A. Yes. I have it now, sir.

Q. At that time it is my understanding that Mr. Miller's salary was increased from \$1000 to \$1500. That is correct, is it not?

A. Yes. Mr. Miller's salary was increased \$500 per month, which made a total of \$1500 per month, effective as of March 1, 1940.

Q. Did you acquiesce in that increase?

(Testimony of E. S. Dulin.)

A. I did.

Q. Why?

Mr. Bednar: The same objection.

The Court: You may answer.

A. After the meeting you previously spoke of an analysis was made, and their salaries were subsequently reduced to \$1000 a month. No—I am wrong on that, as to the date. I will give my answer, starting again. At the March meeting that we are speaking of, they represented to the Board that it was justified on very fine progress of the company as to sales and earnings, an improvement over what they had been.

Q. What conversation occurred at that meeting?

A. I remember the meeting very well. When I came into the meeting I asked what the purpose of the meeting was, and Mr. Miller advised me that I would shortly find out. After he made a report showing that the volume of sales, etc., was improving, and certain economies in manufacturing had been [101] put into effect, he brought up that the next matter was to be salary. I interjected and asked, salary of himself, and he said yes. I asked him, "And also Mr. Ballagh?" And he said, "Yes." And I said, "Has the matter been determined and discussed?" And he said, "Yes. And the matter, as far as Mr. Ballagh, you will find out about that in due time." I also asked if there had been any consideration as to dividends, and he said that later in the meeting I could bring that up. I might add that, based on the statements made by the op-

(Testimony of E. S. Dulin.)

erating officers of the company, I did not have objection to Mr. Miller's salary being increased, but stated, and the record shows, that it was not to be for any definite period, and with the understanding that it should not remain in effect beyond any reversal in the current trend of favorable business conditions, that should there be an indication ahead that business might take the form of a reversal, it was to be adjusted downward.

Q. Mr. Dulin, did you ever make any objections as to the personnel of the Board?

A. During the time of this—

Q. The time involved in this suit, namely, from the 1st day of January, 1939, to the time of the filing of the action?

A. Yes. The Board has been enlarged prior to that time, and at the time Mr. Miller came in the concern I told him I thought—it had been arranged between Mr. Miller and [102] Mr. Patterson—I didn't know it at that time—for the resignation of certain directors and the substitution of others, and we had, of course, as a director, Mr. Rennie, who, in my opinion, and from work he had done, had a certain amount of ability, and I was disappointed to see that he was slated to be removed, and so stated in the meeting. Since that time, or the time Mr. Miller came in, I have had no opportunity whatsoever of suggesting anybody else for the Board.

Q. You didn't suggest Mr. Armington or Mr. Burrell?

A. No, I did not.

(Testimony of E. S. Dulin.)

Q. Did you have anything to do during this period, Mr. Dulin, with the selection of any of the employees?

A. No, not during that period.

Q. Apparently salaries, the record shows, were raised upon three occasions, at the meetings of August 22, 1939, March 18, 1940, and November 29, 1940. Did either Mr. Miller or Mr. Ballagh or anyone else discuss those contemplated raises with you prior to those meetings?

A. No, not at all.

Q. The point has been raised that you voted for the same directors as had been serving before Mr. Miller and Mr. Ballagh. Why did you do that, Mr. Dulin?

Mr. Bednar: I object on the same grounds.

The Court: You may answer.

The Witness: Will you read the question again, please? [103]

. (Question read by the reporter.)

A. I had no other choice, being in the minority, and I believe that those directors would, of course, try to serve the best interests of the company, and that it would have done me no good to have objected, being in a minority.

Q. In other words, your objection as to the amount of their compensation—

A. As far as the officers, the record will show that my objections have always been on the amount of compensation, to be an equitable one.

(Testimony of E. S. Dulin.)

Q. At any of these meetings of the Patterson-Ballagh Company which you attended, was anything ever said as to employing either Mr. Ballagh or Mr. Miller as inventors or designers?

A. Never.

Q. Did that subject ever come up in any of those meetings?

A. Not in the meetings you are speaking of.

Q. Did that subject come up sometime prior?

A. No, not at a meeting. Only, in these meetings, that they were to carry on the work, when Mr. Miller went in, the same as Mr. Patterson. I knew in the past that Mr. Patterson and Mr. Ballagh had, in my opinion, their line of regular endeavor, were making experiments and improvements, developments, rather, of the products, and had been continuing for years. [104]

Q. The subject was not considered, however, at the time of any of these raises? A. No.

Q. Do you recall who suggested putting Mr. Burrell and Armington on the Board?

A. No, I do not.

Q. But you know that you didn't?

A. I did not.

Q. How big a part in the meetings during this period did Mr. Armington and Mr. Burrell play?

Mr. Bednar: I object to the question as calling for a conclusion of the witness, your Honor.

The Court: He may answer.

A. Taking first Mr. Armington, at any of the meetings that I was present at all, other than to

(Testimony of E. S. Dulin.)

make a motion or to second it, a motion that had been suggested, I don't believe Mr. Armington ever said more than ten words. He did on one occasion answer a question of mine to identify some employee in the Mid-Continent. Mr. Burrell took quite an active interest in taking down notes, writing the minutes, and discussions on tax problems, some on accounting questions, but very little as to the operation of the business.

Q. How about raises in salary?

A. Mr. Burrell never spoke much of those, except to vote on them. I think he voted in the affirmative on all of them. [105]

Q. At the particular time of these raises, Mr. Dulin, what reasons were given you for the raises by either Mr. Miller or Mr. Ballagh?

Mr. Bednar: Was Mr. Dulin at those meetings?

Mr. Lamont: I believe Mr. Dulin was at all of those meetings, on the dates I gave you before, August 22, 1939, March 18, 1940, and November 29, 1940.

The Witness: What was the first one?

Mr. Lamont: August 22, 1939.

A. The first meeting of August 22, 1939, I was not present at.

Q. When did you first learn of that raise, Mr. Dulin?

A. I believe at the next meeting that I attended.

Q. Was any reason given at that time for the raise?

(Testimony of E. S. Dulin.)

A. I would like to go back to the other question—possibly a little before that, through seeing an entry in one of the monthly statements, but I can't recollect which event first happened. What was your next question?

Mr. Lamont: Will you just read my question, please?

(Question read by the reporter.)

A. I was not at the meeting.

Q. I mean at any subsequent conversation.

A. Yes, the great progress of the business, and sales and profits, particularly, and some economies.

Q. Now as to the meetings of March 18, 1940, you were present at that meeting, you said? [106]

A. Yes.

Q. What reason was given at that time?

A. The progress of the company, the profits, which profits later proved to be erroneous.

Q. Did you have any financial statements before you at that meeting?

A. At the meeting of March, 1940, we had a statement of the company, and my recollection is that it was brought up to October 31, 1939, and there were other comments made by both Mr. Ballagh and Mr. Miller, and Mr. Ballagh particularly, as to the current situation.

Q. Did you have any audit before you, an audit by a certified public accountant?

A. Not at that time, to my memory.

Q. How about the meeting of November 29, 1940? Were you present at that meeting, Mr. Dulin?

(Testimony of E. S. Dulin.)

A. The meeting of the 29th of November, 1940, I was not present on that day. The meeting, however, was continued to a later date, when I was present.

Q. Was any reason given you after that meeting as to the increases in compensation prior to that time?

A. Yes. A statement presented by the company, showing their profits of some fifty odd thousand dollars for the eleven months ending October 31, 1940. My memory is that I had this company statement before me later on. The figure of \$51,000 was freely used by the officers of the company [107]

Q. Apparently that was not verified by the subsequent audit? A. No, it was not.

Q. I now refer you to Plaintiff's Exhibit 15-D, and ask you whether you are familiar with the document of which that is a copy.

A. Yes, I know of this document.

Q. I believe that there is a provision there, is there not, that upon a sale of stock by Patterson & Ballagh, by Byron Jackson, or Patterson or Ballagh, that such stock first be offered to the other parties to that agreement before being sold to an outsider?

Mr. Bednar: I object to that as not being the best evidence. The document speaks for itself.

Mr. Lamont: I think that is the agreement.

The Court: Is that statement true, Counsel?

Mr. Bednar: I don't know.

(Testimony of E. S. Dulin.)

The Court: Well, you read it, haven't you? It isn't necessary to be so technical.

Mr. Lamont: Here it is: "The parties hereto agree that before any of such parties shall transfer any of the capital stock of said Patterson-Ballagh Corporation to any party or parties other than the parties hereto, such party or parties so desiring to transfer such capital stock, shall offer such capital stock to the other party or parties hereto, upon terms as favorable as such party or parties so desiring to [108] sell such capital stock are able to obtain from any outside party or parties."

Mr. Bednar: I object to this line of questioning, your Honor, on the ground that it is incompetent and immaterial. Mr. Patterson is no party to the suit.

The Court: Well, I don't understand that.

Mr. Bednar: Well, as I understand, the contention is that Patterson, in selling his stock to Mr. Miller, violated this agreement, and Mr. Miller didn't violate and Mr. Ballagh didn't violate it. Whether or not Patterson violated it is not within the issues of this case.

Mr. Lamont: Mr. Ballagh naturally knew about this clause, because he signed the agreement, and apparently he got an old friend of his interested.

The Court: That is what I had in mind. That bare statement by itself, without any other connection, is probably inadmissible, under your objection, but with that suggestion I will overrule the objection.

(Testimony of E. S. Dulin.)

Mr. Bednar: I just want to point out for the record that Ballagh has not violated that agreement.

The Court: No; that is true.

Q. By Mr. Lamont: Mr. Dulin, were either you or Byron Jackson ever offered the Patterson stock before it was sold to Mr. Miller?

A. No.

Mr. Lamont: There is one additional question I want to [109] ask, Mr. Dulin. I think probably in my remarks to the Court I probably overstated my case a little bit.

Q. By Mr. Lamont: What had the relationship been, prior to the time Mr. Miller came into the company, as compared with your relationship with the company after Mr. Miller came in?

A. Going back a good period of years, Mr. Patterson and Mr. Ballagh very often couldn't work very harmoniously together, and I was called on, and it was necessary for quite a while and on numerous occasions, to be a sort of an umpire in their differences, which occasioned a great many meetings with Mr. Ballagh and also with Mr. Patterson, and many of them jointly. The net result of it was that we would be able to get them working harmoniously together for a period of time. And just prior to the sale to Mr. Miller by Mr. Patterson, we had been—and when I say “just prior”, I mean three or four months—there had been quite a few conflicts, and we had worked out a plan that we thought and believed would patch up these

(Testimony of E. S. Dulin.)

differences, to the end that the company would be operated more efficiently. This was our program at the time that Mr. Miller came in. In that connection, I believe that I had been the third member of the Board, the rest of the Board Mr. Patterson and Mr. Ballagh, because they stated on a good many occasions that I did enjoy that. One of the things in our arrangement was that we would have quite frequent meetings. After Mr. [110] Miller came in, at the first meeting, which was February 15, 1939, I raised the question as to whether we would continue to have frequent meetings, and Mr. Miller's answer was quite straight-forward, that he had just come into the company, and he would not know until he got better acquainted with it, the necessity of frequent meetings, but, in any event, that that would be determined at a later time. I might add, Mr. Lamont, to your question, that while there were some matters that came up at the time Mr. Patterson and Mr. Ballagh were the controlling stockholders that they wouldn't take up with me prior to a meeting, the large majority of questions, the questions of operations or policy, they would discuss, either together or individually. Now, after Mr. Miller's advent into the company that relationship disappeared.

Mr. Lamont: That is all, Counsel.

Cross Examination

By Mr. Bednar:

Q. Mr. Dulin, you stated, I believe, that you

(Testimony of E. S. Dulin.)

considered the matter of invention, etc., part of the usual duties of Mr. Patterson and Mr. Ballagh for the company?

A. I did in connection with the products of this company.

Q. Can you name any inventions that Mr. Patterson and Mr. Ballagh made prior to January 1, 1939?

A. Not offhand, but I know that they were working on [111] different matters, and that my memory is very vivid on it, due to the fact that in one of these controversies Mr. Ballagh had brought up, and thought it should be a matter with the Board, as to the amount of money and the type of work that Mr. Patterson was doing, for instance, and it was then the policy of the company for a short period of time—it was later not carried through—that they reported at the meetings of the Board about how much had been expended and how much more might be expended on different developments of products. I can also go further, Mr. Counsel, and state—

Q. The only question was, can you name any inventions before January, 1939?

Mr. Lamont: I think the minutes show certain matters in that regard.

Q. By Mr. Bednar: Now, Mr. Dulin, will you turn to page 34 of your deposition, I believe?

Mr. Lamont: Page 34?

Mr. Bednar: Yes.

Mr. Lamont: All right.

(Testimony of E. S. Dulin.)

Q. By Mr. Bednar: I will ask you if your deposition wasn't taken June 23, 1942, and whether or not in that deposition you didn't testify as follows:

“Q—— (By Mr. Bednar): Mr. Dulin, do you know anything about the nature or value of any inventions which Mr. Miller or Mr. Ballagh have made and given to the defendant Patterson-Ballagh Corporation royalty-free? [112]

“A. No.”

Did you so testify?

A. Yes, at that time.

Q. Now, Mr. Dulin, referring to your testimony concerning the raises which took place on November 29, 1940—I will find those in the minutes—I believe you were not present at that meeting; is that correct? A. Yes.

Q. And I believe you testified on direct examination that subsequently, as a reason, or one of the reasons for those raises which took place then, a statement of the company was presented showing some \$50,000 in net profits for the preceding eleven months period, and that that statement was not verified by a subsequent audit.

A. In the meeting of 1940 the amount may not have been \$50,000. I believe there are in evidence here all of the monthly statements of the company, and I would like to have the benefit of turning to those.

Q. Let me indicate to you some portions in the

(Testimony of E. S. Dulin.)

minutes. I believe that statement that was shown at that time indicated some \$51,000, did it not?

A. No. It was a later meeting. The minutes refer to a company statement of October 31, 1940.

Q. When that company statement was presented was there any discussion of the fact that it did not reflect any reserves for contingent liabilities arising out of royalties [113] and arising out of taxes?

A. If the statement is in evidence here, could I have it to refresh my memory? I can answer your question, I think, without it, but I would rather have the benefit of it. The statement of October 30th that was at the meeting shows profits for those eleven months of \$62,765. Now, what was the other question?

Q. I want to know whether, at the time that statement was presented, it wasn't announced at the meeting that that statement did not reflect contingent liabilities for taxes and royalties.

A. The statement was not given to the meeting, but upon query by me. I asked what was in the fund account, and Mr. Miller stated—which, by the way, was \$15,835—that that contained some provisions for contingencies separate. On further questions as to tax matters, tax reserves in there, the rest of it was a contingent liability on litigation and royalties.

Q. I read to you here a portion of the minutes occurring on December 3, 1940, at which the balance sheet indicating the financial condition at October 31, 1940, was presented, and I read this paragraph:

(Testimony of E. S. Dulin.)

“The suggestion was made that a reserve be maintained to cover contingent liabilities of the company, in respect to taxes and possible requirements for the payment of royalties on certain of its products, and it was the consensus [114] of opinion of the directors that this should be done.” Did that occur at that meeting?

A. Yes, after the statement I made, and I had been under the impression, particularly in light of Mr. Miller’s answer, that there were certain matters there for taxes that the statements would reflect, as the proper reserves, and there had been a resolution or a consensus of opinion of the directors in 1938 to that effect.

Q. Let me ask you this question. Looking at the statement of October 31, 1940, do you find any reserves for contingent liabilities?

A. Contingent liabilities of \$4799.25.

Q. Refer to the profit and loss statement. Is there any reserve shown in the profit and loss, that is, that figure that you are contending is incorrect?

A. What is the caption that you want me to find, if I can, on here?

Q. Reserves for contingent liabilities, having to do with income taxes and royalties, possible royalties?

A. There is none there. There are items of taxes in several places.

Q. Those aren’t reserves, are they?

A. I am not a bookkeeper or an accountant. But I have read a great many statements. But I think

(Testimony of E. S. Dulin.)

they are set up there as an operating expense, the way they show.

Q. Mr. Dulin, I believe you testified that you had been [115] a director of Patterson-Ballagh Corporation from January 1, 1939, to September 10, 1941? A. Yes; I was a director.

Q. During that period of time approximately how many hours have you personally spent in the offices of Patterson-Ballagh Corporation in connection with attendance at shareholders and directors meetings?

Mr. Lamont: I object to the materiality of that, your Honor.

Mr. Bednar: I want to show how much attention this gentleman has paid to the corporation's business, outside of dividends.

Mr. Lamont: The same objection.

A. I think that can be easily answered by a study of the minutes of the meetings that I was present at. The average length, I would say, was probably a little over an hour. On one occasion I went downstairs through the plant during that period.

Q. Was this the only time that you were in the plant, outside of the shareholders and directors meetings, during that period of time?

A. When I spoke of the plant, I was speaking of the shop downstairs.

Q. Yes.

A. Now, what was your question?

Q. Is that the only time you have been in the

(Testimony of E. S. Dulin.)

plant [116] during this period of time, except for the time that you were at the Board meetings and shareholders meetings?

A. That is right, on their premises.

Q. How long were you down in the plant?

A. About fifteen or twenty minutes.

Q. As I understand your testimony then, you spent about an hour at each shareholders and directors meeting at which you were present, and you spent fifteen minutes in the plant outside of that time?

A. Yes. I don't think there was a meeting that lasted over two hours during the period you are speaking of. I might add to your question that after the position taken by the Patterson-Ballagh Corporation on breaking our royalty agreement, I never felt very welcome around there.

Q. Weren't you invited to go down into the plant at various times to see what was going on?

A. Just on the one occasion, that I recall, during the period you are speaking of. I will add that during this period I was extremely busy on Byron Jackson matters and some very strenuous government matters.

Q. Outside of these visits which you made to the plant of Patterson-Ballagh Corporation, have you had any other sources of information in respect to the nature and extent of the services performed by Mr. Ballagh and Mr. Miller during the period of time in question?

A. No, except as reflected by the monthly state-

(Testimony of E. S. Dulin.)

ments [117] which I would get from time to time.

Q. I understand, then, that at the time that you were objecting to all of these raises in compensation, that you knew nothing of any inventions or devices which had been made and given to the corporation royalty-free by Mr. Ballagh and Mr. Miller?

A. I did not. During the period you are speaking of I was in Washington, at the request of the government, over twenty times, and spent half my time outside of the State of California.

Q. During the period of time in controversy, or at any time since September 10, 1941, have you, as a director, offered any resolution to reduce the compensation paid to Mr. Miller and Mr. Ballagh?

A. I don't think I offered any resolutions. I talked about them plenty. It wouldn't have done me any good.

Q. Have you, at all times during the period in controversy and at all meetings of shareholders at which you were present, voted for the present directors to remain in office?

A. Your question is on shareholders' meetings?

Q. Yes. A. Yes.

Q. And at all meetings of the Board of Directors, during the period of time in controversy, at which you were present, have you not always voted for the election of the same officers, as they are today? [118] A. Yes.

Q. During the period of time in controversy, is it not true that you did not object to any compen-

(Testimony of E. S. Dulin.)

sation until after the repudiation of the license agreement on June 30, 1939?

Mr. Lamont: During the period in question?

Mr. Bednar: During the period in controversy, yes.

Mr. Lamont: That was about a five months period?

Mr. Bednar: Yes.

A. There were no increases that I knew of that were brought to the Board's attention, in salaries, to my memory, from the time that Mr. Miller went in until after Byron Jackson received a notice of the termination or the cancellation or repudiation of that agreement which had been in effect for a good many years. I do not recall any proposal for an increase during that period.

Mr. Bednar: I am looking for one of the exhibits to the deposition. I wonder if we could take a short recess.

The Court: Yes.

(Short recess.)

The Witness: If the Court please, during the recess, it was called to my attention that there was a little confusion in my statement of the raise to Mr. Miller in March of 1940, I believe, in which I was looking at the minutes, and the record probably shows my statement that it was raised from \$500 to \$1500. I intended and thought I said that it was raised from \$1000, by \$500, to \$1500, so I would [119] like to correct it.

(Testimony of E. S. Dulin.)

Q. Mr. Dulin, I show you a letter dated March 27, 1940, purporting to bear your signature, and addressed to Mr. Burrell. Is that your signature?

A. It is.

Q. Did you cause that to be forwarded to Mr. Burrell? A. I did.

Mr. Bednar: I offer this in evidence.

The Clerk: That will be Defendants' Exhibit I.

Mr. Bednar: I would like to read this letter to the Court, your Honor. This letter is dated March 27, 1940. Your Honor will recall that Mr. Miller was raised from \$1000 to \$1500, and Mr. Ballagh from \$1000 to \$2000, on March 18th, about nine days prior to this.

“Referring to your letter of March 23rd, I do not think the draft of the minutes of the directors' meeting properly reflects the essential statements made at the meeting, particularly by myself.

“In connection with the report of the President, it was very definitely set forth that the volume of business that was now being enjoyed was considerably in excess of that experienced during the comparable period of the previous year, etc.”

And the sales reports bear that out.

“It was pointed out particularly by the President that the current asset position had materially increased.” [120]

And the same is reflected in the reports.

“When it was first mentioned at the meeting that it would be proposed that Mr. Ballagh's salary be increased \$1000 a month effective March 1, I very

(Testimony of E. S. Dulin.)

strenuously called to the attention of the directors present that that would result in an executive and administrative salary overhead of the two officers at the rate of \$46,000 per year for running a company that from the last preliminary figures available for the 1939 year showed sales of approximately \$232,000.”

As a matter of fact, the sales for 1939 were about \$336,000. Now, continuing: “—which was a marked decrease from the 1938 year, both in sales and profit; and salaries of this amount, based on past performance, were in excess of 12 percent of the total sales and that such compensation was entirely unwarranted and not fair to the minority stockholding. I further stressed the point that salaries should not be increased until dividends could be paid and I thought action on either one was wrong at this time and should await until we were further into the year. However, if this overhead was going to be increased in spite of my objection, that then and then only, dividends should be given consideration. My point was and is that on the present showing”—he is speaking about \$232,000—“combined executive salaries of \$36,000 a year are all the business can stand and that any increase should not be effective until [121] such time as the company was able to pay dividends.

“The language I used was quite strong and I think yours is very mild and possibly misleading.

“Awaiting your reply, I am

“Yours very truly,

“E. S. DULIN.”

(Testimony of E. S. Dulin.)

Q. By Mr. Bednar: Mr. Dulin, in your deposition I asked you whether or not, in using the word "sales" in this last exhibit, where you say sales were approximately \$232,000, you were referring to gross or net sales, and at that time I don't believe you recalled. Have you recalled since?

A. No. I always referred to net sales, and I think that is what I referred to here. Now, if I may, I would like to comment on this letter.

The Court: I think you have answered the question.

Mr. Bednar: You have.

Q. By Mr. Bednar: Byron Jackson now owns 250 shares of the defendant corporation, does it not?

A. Yes, sir.

Q. From whom did they purchase these shares?

A. They were purchased prior to my advent into the company, but it is my understanding that they were bought from the Ballagh interests and Patterson interests, in 1928, I believe.

Mr. Bednar: At this time I want to present and offer [122] in evidence some figures prepared for me by the plaintiff, and I will explain them. The evidence indicates that on September 20, 1928, Byron Jackson purchased from Mr. Ballagh and Mr. Patterson 250 shares of Patterson-Ballagh Corporation, at \$100 a share, for a total amount of \$25,000. The evidence also indicates the amount of dividends that the plaintiff has received on the shares during that period of time. The purpose

(Testimony of E. S. Dulin.)

of this evidence is this: We have here the market value of shares in Byron Jackson on September 20, 1928, which it so happened was approximately \$100 a share, the same as the price of Patterson-Ballagh shares at that time. And we have here a list of all the cash and stock dividends paid by the plaintiff on its shares from September 20, 1928. And the purpose is to show what \$25,000 invested in the plaintiff on September 20, 1928, would have produced, as compared to what the record shows \$25,000 invested in Patterson-Ballagh Corporation on September 29, 1928, has produced. This goes to the sincerity of this plaintiff and the corporate plaintiff. They introduced charts last night correlating the activities of the defendant Patterson-Ballagh Corporation in reference to dividends, gross sales and salaries, and if they are serious in criticising the proportion of salaries to dividends, then we ought to be entitled to show what their practice has been.

Mr. Lamont: I object to its materiality, if the Court please. [123]

Mr. Bednar: The purpose is to show the sincerity of this plaintiff.

Mr. Lamont: What another company may have done in regard to the payment of dividends or salaries or anything else certainly wouldn't be competent evidence as to the value of the services rendered by Mr. Miller and Mr. Ballagh, and certainly wouldn't be competent.

Mr. Bednar: This exhibit shows the correlation

(Testimony of E. S. Dulin.)

between the salaries and the dividends paid by Patterson-Ballagh Corporation, and the inference is that there were a lot of salaries and no dividends. Now I want to show what the practice of Byron Jackson was, to show their good faith.

Mr. Lamont: They were employed by Patterson-Ballagh, and not by Byron Jackson.

Mr. Bednar: They are criticising us, and I want to show the good faith of their contention.

Mr. Lamont: It is certainly a collateral issue.

Mr. Bednar: Let me make an offer of proof.

The Court: All right.

Mr. Bednar: At this time I offer to prove by this witness that Byron Jackson Company purchased 250 shares of Patterson-Ballagh Corporation on September 20, 1928, for \$25,000; that from September 20, 1928, to the end of 1941 the plaintiff received at least \$121,275 in cash dividends on its 250 shares of defendant Patterson-Ballagh Corporation; and that the highest market value of plaintiff's shares of [124] stock on or about September 20, 1928, was approximately \$100 per share; that the same amount of money, to-wit, \$25,000, invested by plaintiff in shares of the defendant corporation on September 20, 1928, would have purchased the same number of shares, to-wit, 250, in Byron Jackson Company on September 20, 1928; that the sum total of all cash and stock dividends declared and paid by the plaintiff on said 250 shares from September 20, 1928, to the end of 1941, did not exceed approximately \$6700; that for the period from Sep-

(Testimony of E. S. Dulin.)

tember 20, 1928, to the end of 1941, \$25,000 invested in Patterson-Ballagh Corporation has produced at least \$121,275 in dividends, whereas \$25,000 invested in plaintiff would have produced only about \$6700 in cash and stock dividends. In addition, I offer to show that the compensation of Mr. Dulin, for example, for 1941, was \$50,000. I am just comparing their dividend and salary policy with the policy on our part that they criticise.

The Court: Well, that would be interesting, of course, but it probably wouldn't have any probative value. You could probably find a thousand corporations in Southern California that that would apply to.

Mr. Bednar: The thing I am trying to get at here——

The Court: I understand what you are trying to get at. I don't think it is proper.

Q. By Mr. Bednar: Going back again to the amount of time you spent in the Patterson-Ballagh Corporation plant, [125] would you say the total amount of time you spent during 1939, 1940 and 1941 exceeded ten hours?

A. Let me see the minute book and count the meetings, and that might help me a little. Your question is directed, Counsel, I think, to the time spent on the premises of Patterson-Ballagh?

Q. That is right.

A. And it refers to 1939, 1940 and 1941?

Mr. Bednar: Up to September 10th. Maybe we can let Mr. Dulin finish this computation.

(Testimony of E. S. Dulin.)

The Witness: I am still in 1939.

Mr. Bednar: I think we had better let you finish your computation, and ask you about it later. That is all for the present, until he does that.

Redirect Examination

By Mr. Lamont:

Q. This is the letter written by Mr. Dulin to Mr. Howard Burrell, dated March 27, 1940, marked Defendants' Exhibit I. I again show you this letter, Mr. Dulin, and ask you whether you have any comment to make in regard to that figure of \$232,000. A. I have.

Q. What is it?

A. This letter written by me is a little ambiguous on the face of it. The figure of \$232,000 refers to the sale [126] of protectors and stabilizers, and at the time that that figure was determined it was from direct inquiry by me to Mr. Ballagh, and he produced some figures out of a drawer on the left-hand side of his desk. My question was, what were our sales for the year 1939, on the bread and butter part of the business of Patterson-Ballagh, which had always been, namely, protectors and stabilizers, and he gave me a figure of \$232,000, and when I figured on the back of a piece of scrap paper there about the percentage to total sales, the \$46,000, it obviously shows here that I was figuring on a larger amount, which was in excess of \$232,000, and my question to Mr. Ballagh was, was that a decrease in sales of protectors and stabilizers over the pre-

(Testimony of E. S. Dulin.)

vious year, and he said it was. You have introduced in evidence a chart showing for the year 1939 your sales of protectors and stabilizers, of \$233,000, and apparently I made an error of \$1000.

Q. Mr. Dulin, I now show you what purports to be your copy of the assets and liabilities of Patterson-Ballagh Corporation as of October 31, 1940, accompanying the report, apparently, and I believe that some of the notes on that are in your handwriting, are they not?

A. Yes; these are my handwriting. This was my copy of the statement I had at the meeting, in which the figures of October 31, 1940, were reviewed.

Q. Does that refresh your recollection as to any element [127] there?

A. Yes. Just as I testified, when I asked Mr. Miller what was in this \$15,835 item marked "Fund account," he stated, "Reserve for taxes and reserve for contingencies." I thought at the time that he answered the question.

Q. Counsel for the defendant has gone into the matter of the time you devoted to Patterson-Ballagh, especially the amount of time you were on the premises of Patterson-Ballagh during the period from January 1, 1939, to September 10, 1941. Did your time stop there, or did you devote other time as well to Patterson-Ballagh?

A. Yes, other time studying statements, talking with our auditors, discussions with the different members of our organization in the oil fields as to

(Testimony of E. S. Dulin.)

certain things they were doing, the developments in the oil fields, foreign questions, and all.

Q. That was a substantial amount of time, was it? A. Yes, quite a bit of time.

Q. There was one point that slipped by me yesterday in having counsel put in these charts. I am now referring to Defendants' Exhibit F. Apparently on that exhibit there is a statement to the effect that the investment of Byron Jackson Company in Patterson-Ballagh is \$25,000. I will show you the exhibit, Mr. Dulin. Does that figure properly reflect the investment of Byron Jackson in the corporation of Patterson-Ballagh? [128]

A. It does not. When I joined the Byron Jackson Company, their books reflected, and still reflect, an investment in Patterson-Ballagh Corporation of \$100,000, \$25,000 in cash and——

Mr. Bednar: Just a minute. I believe all this is hearsay. You didn't come to the Byron Jackson Company until after the deal, did you?

A. That is correct.

Mr. Bednar: I don't think this is admissible, then.

Mr. Lamont: If the Court please, it refers to how the matter is carried on the records of our company.

Mr. Bednar: Were those records ever communicated to us?

Mr. Lamont: I don't know whether they were or not.

(Testimony of E. S. Dulin.)

Mr. Bednar: I believe the evidence is purely hearsay, your Honor.

The Court: It probably is, It would be hearsay.

Mr. Lamont: All right. Take the witness.

Mr. Bednar: That is all.

Mr. Lamont: That is all, Mr. Dulin, I guess.

The Witness: Shall I finish this one here?

The Court: You can take your book down and work on it.

Mr. Bednar: I want to ask Mr. Dulin one more question.

Recross Examination

By Mr. Bednar:

Q. Referring again to your letter of March 27, 1940,— [129] A. Yes.

Q. At the time you wrote that letter, did you know anything about any items sold by the corporation other than protectors and stabilizers?

A. Yes; I knew they had certain lines, and that they had had for a good many years.

Q. Did you know what the gross profit was on the sales of these other non-protector items?

A. I did not. I tried to find out on a good many occasions, and could not.

Mr. Bednar: That is all.

Mr. Lamont: That is all. The next witness I am going to produce is an expert witness, and I am going to tell the Court in advance that he is quite deaf, and it may be a little difficult to examine him. Call Mr. Bunch. [130]

E. S. BUNCH,

called as a witness in behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: State your full name, please.

The Witness: E. S. Bunch.

Direct Examination

By Mr. Lamont:

Q. Mr. Bunch, where do you reside?

A. Los Angeles.

Q. How long have you resided here?

A. Nine years, the last time.

Q. What occupations have you pursued, say in the last nine or ten years?

A. I was an analyst and statistician, with experience as a stock broker and investment counsel and financial writer and public relation counsel.

Q. During that period have you had occasion to go into the amount of executive salaries of numerous companies? A. Repeatedly, yes.

Q. Why did you happen to go into these matters?

A. Mostly research work, compiling data for use in the valuation of corporate securities.

Q. Not merely, then, for the purposes of this case? A. No.

Q. Let me ask you this question, Mr. Bunch. Let us [131] assume a small manufacturing business, in other words, what might be called a specialty business.

Mr. Bednar: Just a minute. I will abide by whatever your Honor wants me to do, but I would

(Testimony of E. S. Bunch.)

like to ask this gentleman a few questions on voir dire before they get to the point of asking for a conclusion.

Mr. Lamont: That is perfectly satisfactory to me.

The Witness: I am quite deaf.

Q. By Mr. Bednar: Mr. Bunch, I take it that you intend to testify concerning salaries in other corporations, do you? A. If asked, yes.

Q. What types of corporations are those?

A. General.

Q. General? A. Yes.

Q. Are any of these corporations engaged in the oil tool business? A. Yes.

Q. Are any of them engaged in the business of manufacturing and selling rubber for industrial purposes?

A. In some of them there would be, yes; I mean they would carry rubber articles among their lines.

Q. In the oil tool business?

A. In the oil tool business.

Q. Rubber articles? A. Yes. [132]

Q. Are the salaries that you are going to testify to salaries of presidents and chief executives?

A. Heads, chief executives, yes.

Q. Do you know whether or not those executives ever invented devices and gave them to their corporations royalty-free?

A. I don't think I do, no.

Q. Do you know what the duties of these vari-

(Testimony of E. S. Bunch.)

ous officers concerning whom you are going to testify were?

Mr. Lamont: I might simplify this a little. I am not going to ask this witness anything about the value of an inventor's services. I am going to approach that through a different means.

Q. By Mr. Bednar: Do you know anything at all about the defendant Patterson-Ballagh Corporation?

A. No, except its financial data and the salaries that the officers draw and the general facts of its financial setup and operation.

Q. Do you know anything about the business of making and selling rubber specialties in the oil tool business?

A. I am engaged in the rubber business. I own a part of one, but not in the oil tool business.

Q. Do you know anything about these items here? Have you ever seen them before?

A. I know generally the usage of them, yes. I am in the oil business more or less myself. [133]

Q. Have you seen these in operation?

A. Yes, I have seen them.

Q. Do you know anything about hydraulic applicators?

A. No, not especially, because I have never been connected with the operating end. I have been on the derrick and seen the things, probably, and paid no attention.

Q. Do you know anything about the importance of the hydraulic applicator in the drilling of wells?

(Testimony of E. S. Bunch.)

A. No, not specifically.

Q. Do you know anything about the importance of these protectors in the drilling of wells?

A. No, I know their usefulness.

Q. Do you know anything about pipe wipers?

A. I have seen them, and seen them used, and that is all.

Q. Do you know anything about the importance of using them. A. No.

Q. Are you in business for yourself?

A. Yes.

Q. When did you first meet Mr. Dulin?

A. Last Monday.

Q. Did you ever know him before then?

A. No.

Q. Have you ever prepared statistical studies of Byron Jackson? [134]

A. No. I have casually studied them with relation to securities.

Q. But concerning the corporate salaries to which you will testify if allowed to, you don't know whether or not the persons who received those salaries ever gave any inventions to their corporations royalty-free?

A. In some specific case I probably would. My studies cover a great number of corporations. Off-hand, though, I couldn't reply that I do. I know I have studied Ford and Spicer Motors, and those various companies, and in many cases there have been inventions by the chief executives among

(Testimony of E. S. Bunch.)

them. But to call it out of thin air, I couldn't do it, no.

Q. Do you know anything about the duties of Mr. Ballagh or Mr. Miller in this case?

A. I have read the depositions, and that is pretty well covered.

Mr. Bednar: I guess that is all. It goes to the competency of this witness. I don't believe his testimony is going to cover any services in addition to duties in the way of inventing. Otherwise his testimony will have to bear out whether he knows anything about rubber specialties in the oil tool business. There is a great difference between those and metal parts. So I will object to the testimony.

Mr. Lamont: I submit the objection.

The Court: Go ahead. [135]

Q. By Mr. Lamont: Mr. Bunch, let us assume a small manufacturing company or business, in fact a specialty business, which has only two executives, and which has an invested capital and surplus of between \$200,000 and \$250,000, which has net sales ranging from \$300,000 to \$400,000 per year, and which has earnings ranging from \$20,000 to \$30,000 per year before taxes, and let us assume that these two executives devote their entire time and attention to the carrying on of that business, laying aside all questions as to their possible value as inventors or designers, what would you say, from your investigation of questions of executive salaries, would be the reasonable value of their services to the company?

(Testimony of E. S. Bunch.)

A. I would say approximately \$10,000 each.

Mr. Bendar: May I have the last question and answer?

(Record read by the reported.)

Mr. Lamont: Mr. Bunch has compiled some very interesting figures. It may be objectionable for me to put that in evidence, but for the sake of the record I will—

Mr. Bednar: Can we look it over and then we will see? I will look it over during the noon hour.

Mr. Lamont: Certainly. Outside of offering this testimony, that is all I have with this witness.

Mr. Bednar: I understand that this witness does not base his estimates upon inventors' services of any kind?

Mr. Lamont: No. I didn't ask him to go into that, [136] because I don't think he is competent to testify along those lines. I don't think his testimony on those lines would aid the Court. I am going to approach that through another witness, as I stated before.

Cross Examination

By Mr. Bednar:

Q. Mr. Bunch, Do you know anything about the importance of patents and inventive rights in the oil tool business, and more particularly the use of rubber industrially in the oil tool business?

A. I know generally about the very high value of many of those patents, yes.

Q. Do you know of companies that have enjoyed

(Testimony of E. S. Bunch.)

very prosperous years, and then a new patent has issued and has practically run them out of business?

A. Not exactly that, but I have known of companies that have enjoyed very prosperous years, and then, due to some betterment of the article of their competitors, have proceeded to lose money, of course.

Q. And lose their business to the competitors?

A. Yes.

Q. Then, in your estimation, the patent rights of a company which is engaged in manufacturing and selling rubber specialties in the oil tool industry are very important?

A. I would consider them so, yes. [137]

Mr. Bednar: That is all.

Mr. Lamont: That is all. That is all for the time being. Do you want to look over that?

Mr. Bednar: Yes.

Mr. Lamont: Mr. Chesnut, will you take the stand? [138]

JOHN D. CHESNUT,

called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Will you please state your full name?

The Witness: John D. Chesnut.

(Testimony of John D. Chesnut.)

Direct Examination

By Mr. Lamont:

Q. Mr. Chesnut, where do you reside?

A. In La Canada, California.

Q. What company are you connected with?

A. Byron Jackson Company.

Q. How long have you been connected with that company?

A. Approximately 12 years.

Q. In what capacity?

A. Manager of the patent and new development department.

Q. Will you be a little more specific as to what that covers.

A. I have charge of the investigation of new products that are brought to the company from the outside, and new products developed from within the company, from the standpoint of their patentability, whether or not they might infringe any other patent, whether or not they are suitable for manufacture by our company, and investigation into the manufacturing cost and probable selling price and market conditions and profits to be made. I also supervise the [139] work of others who are engaged in the detail of that work in the patent end and in the development of it.

Q. In the course of your work with Byron Jackson, do you have occasion to become acquainted with what is normally paid to an inventor or designer for full time service by a corporation?

(Testimony of John D. Chesnut.)

Mr. Bednar: I object to that. I think the question is too general. If you want to direct it to some specific company——

Mr. Lamont: I will bring out what Byron Jackson paid, if you want it.

Mr. Bednar: No. It is a relative matter. Steinmetz is paid tremendous sums.

Mr. Lamont: It seems to me that is more a question of cross-examination, Counsel. I will submit the objection.

Mr. Bednar: I don't know how it would aid the Court, but I will object.

Mr. Lamont: I will be very frank with regard to this expert testimony. I put it in for one reason. I think, from the facts before the Court, the Court is perfectly safe to figure out the compensation. There is one California case which is rather annoying, which seems to infer that if you prove all the facts and circumstances and don't prove the extent of such expenses, the Court should find that the case hadn't been established, and that is the real reason for offering it. I will take the ruling of the Court. [140]

The Court: I assume there would be so much variation between what experts would be paid that I don't see that it would be of any particular interest.

Mr. Lamont: That is all, then. That is all, that is, in chief. Mr. Dullin has gotten this other matter figured out. Do you want to put him back on?

The Court: All right. [141]

E. S. DULIN, recalled

Cross Examination

The Witness: A. About 18 hours.

The Court: What is the question?

Mr. Bednar: The question was, how much time did he spend on the premises of Patterson-Ballagh Corporation during 1939, 1940, and up to September 10, 1941.

The Court: And the answer is 18 hours?

A. Around 18 hours at all the meeting that were called, that I appeared at.

Mr. Bednar: That is all.

Mr. Lamont: That is all. [142]

DEFENDANTS' CASE

Mr. Bednar: First of all, the inference has been left here that this other suit for the repudiation of royalties doesn't amount to much.

The Court: Well, it doesn't, as far as I am concerned. It might as far as the parties are concerned. I am interested in only one thing here, whether these salaries are proper.

Mr. Bednar: I appreciate the Court's viewpoint. The only thing is, the inference has been left that there was a conspiracy here to repudiate, and to raise salaries, and to stop dividends. As a part of showing that conspiracy, the inference has been left—well, maybe this royalty proof doesn't amount to anything—in order to refute that inference, I

have the brief here, which I would like to introduce.

The Court: I think Judge Hollzer will have to read the brief in that case.

Mr. Bednar: The briefs are rather lengthy. Call Mr. Burrell.

HOWARD BURRELL,

called as a witness on behalf of defendants, being first duly sworn, testified as follows:

The Clerk: State your name, please. [143]

A. Howard Burrell.

Direct Examination

By Mr. Bednar:

Q. Mr. Burrell, are you an attorney?

A. I am.

Q. Approximately how long have you been practicing in California? A. Since 1926.

Q. Will you state briefly when you met Mr. Miller for the first time, the defendant?

A. I met Mr. Miller in the early part of the year 1939, the latter part of January or the early part of February.

Q. And when did you first meet Mr. Ballagh?

A. I met him in the fall of the year 1934.

Q. Will you state briefly your connection with the Patterson-Ballagh Corporation prior to the time you became a director?

A. In the fall of the year 1934 they were involved in certain patent litigation involving title

(Testimony of Howard Burrell.)

to a patent to a manual applicator or protector, and my firm was associated with Lyon & Lyon as counsel in the defense of that action. The action was commenced, as I recall, about December, 1934, and was tried in the Superior Court of this County, and appealed to the Supreme Court, and finally concluded in the year 1937 or the early part of 1938. In the year 1938 I [144] handled one matter for the corporation, that of the amendment of its by-laws, to increase the number of directors from three to five. It is possible the corporation consulted me on other matters. I have one in mind, and that was the matter of this judgment in this other litigation with Mr. Bettis, which was handled while this litigation involving the manual applicator was pending. During the early part of 1939, at the end of January or the first part of February, Mr. Ballagh and Mr. Patterson came to my office and said they had a transaction they wanted reduced to writing with Mr. Miller, covering an option from Mr. Patterson to sell to Mr. Miller his shares of capital stock of Patterson-Ballagh Corporation. I represented Mr. Patterson in that transaction. It was comparatively simple. It was the preparation of a letter and note on the option agreement.

Q. When did you become a director of Patterson-Ballagh Corporation?

A. I became a director of the Patterson-Ballagh Corporation during the month of June, 1939.

Q. When did you first become general counsel for the Patterson-Ballagh Corporation?

(Testimony of Howard Burrell.)

A. A few months after that. I wouldn't want to say definitely—around the fall of 1939. I am general counsel, if that is what you mean.

Q. Yes.

A. I had been special counsel in these litigation matters [145] I mentioned before, and had handled a couple of special matters for them. Lyon & Lyon were their general counsel.

Q. From January 1, 1939, to September 10, 1941, do the minutes of all the meetings at which you were present correctly reflect what took place at those meetings?

A. They do, to the best of my ability, for the reason that I drew them from notes taken at the meetings at which I was in attendance.

Q. What salaries were Miller and Ballagh receiving when you went on the Board?

A. \$1000 a month each.

Q. Were you present at the meeting on August 22, 1939, at which time Mr. Ballagh received a raise? A. I was not.

Q. Do you know whether you were present at a subsequent meeting and approved the minutes of August 22, 1939? A. I was.

Q. What were your reasons for approving the \$4000 raise given to Mr. Ballagh?

A. Well, there were several.

Mr. Lamont: I think that is incompetent, irrelevant and immaterial, if the Court please. We have here merely the question of whether his compensation was reasonable.

(Testimony of Howard Burrell.)

Mr. Bednar: Do I understand that the only question in this case is whether or not the compensation is excessive, that there is no contention of lack of good faith, or anything [146] like that?

Mr. Lamont: Oh, certainly—that contention also. Perhaps it might be material to that issue. I will withdraw the objection.

A. Mr. Ballagh during this period had devoted a great amount of time to his efforts as sales manager of the company. He had had a great part in litigation pending in Oklahoma, or commencing in Oklahoma, involving applicator patents, and he had completed the perfection of the hydraulic applicator, which I considered the most important thing that had as yet been received by the company in the last few years.

Mr. Lamont: Is counsel putting him on as an expert on patent matters or not?

Mr. Bednar: I am asking for his reasons for—

Mr. Lamont: I ask the Court to strike out the last remark as to the value of the patented devices.

The Witness: It was not a patented device.

Mr. Lamont: Well, the value of the invention, the so called invention.

The Witness: As yet.

The Court: Go ahead.

A. The company, after the flush period of its existence, and during its flush period, had used what is known as a manual applicator, which was covered by patent issued to the company as the

(Testimony of Howard Burrell.)

assignee of Bettis, which was the subject of this litigation I previously referred to, but [147] which had many difficulties in the field of operation, which were answered by the hydraulic applicator, which enabled the company to hold its protector customers to it.

Mr. Lamont: It seems to me this is subject to the same objection. We have a lawyer on the witness stand. You are not a patent attorney, are you, Mr. Burrell? A. That is correct.

Q. By Mr. Bednar: In this litigation from 1934 to approximately 1938 that you said you were engaged in, did that case involve applicators of all kinds?

A. Yes, it did, from the very first to the last applicator that had been in existence.

Q. How many applicators, do you recall, were involved?

A. Six or seven, all of which were models of manual applicators, from the very first one that had been developed, involving various improvements, as distinguished from the hydraulic applicator. It was a manual applicator, and not a hydraulic applicator.

Mr. Bednar: I might say that I offer this testimony to show the reasons which this witness had in mind, and not for the purpose of actually showing the value of the hydraulic applicator itself. In other words, the question is the good faith.

The Court: These other gentlemen connected

(Testimony of Howard Burrell.)

with the corporation would know more about it than the attorney.

Q. By Mr. Bednar: Did you have any other reasons for [148] approving the initial raise of Mr. Ballagh's salary?

A. None other than I stated, other than that, as I say, he was engaged in a great many activities outside the ordinary course of his duties, in developing articles and devices. Up to that time, during my connection with the company, he hadn't done anything in this field of any consequence, and during the year 1938 and 1939 he devoted himself, in addition to his duties as sales manager, to the development of additional articles for manufacture and distribution.

Q. Were you present at the meeting on March 18, 1940, at which Mr. Miller's compensation was raised from \$1000 a month to \$1500 a month?

A. I was.

Q. What were your reasons for approving Mr. Miller's raise?

A. Mr. Miller had come in—he had been in the company about a year. He had taken charge of its finances and the operation of its factory and the purchasing of its supplies. He had shown an improvement in financial condition through his efforts by the ratio of current assets to liabilities, which was improving at that time, and had improved some before. I had been informed of various efficiencies he had installed in the plant and in the office. I had discussed with him various

(Testimony of Howard Burrell.)

activities that he was engaged in, in the development of new devices for sale and distribution. Mr. Dulin was at the meeting and said he had no objection to [149] the compensation of \$18,000 a year, or \$1500 a month, and in view of the matters I have in mind, and in view of the fact that Mr. Dulin had no objection, I approved it.

Q. What were your reasons for approving Mr. Ballagh's raise in compensation from \$1000 to \$2000 a month, at the meeting of March 18, 1940?

A. The company, when this protector, which was the Bettis Protector, was acquired by it, paid over \$400,000 in royalties to Mr. Bettis for this protector, until the patent on it was declared void, and many thousands of dollars to Byron Jackson under the license agreement.

Mr. Lamont: What is the materiality of this?

The Witness: I am stating my reasons. And Mr. Ballagh, during the fall of 1939 and 1940, the early part of 1940, had developed—a few days prior to that time had filed an application for letters patent on the lip protector, which I felt was of great value to the company. I felt and I still feel that it was——

Mr. Lamont: That is subject to the same objection I have continually urged. The witness is an attorney, and should follow the rules as far as testimony is concerned.

The Witness: I was answering the question, Mr. Lamont.

The Court: After all, he is stating the reasons,

(Testimony of Howard Burrell.)

and while they may not be valid, they are his reasons.

A. I considered the lip protector a great improvement over the old type of what was known as the Bettis Protector. [150] And Mr. Ballagh was still working on other devices, these activities being carried on outside of his ordinary and usual duties as sales manager and secretary and treasurer of the company, and I thought the value to the company of his services and the fact that he had indicated an intention to transfer to the company without other consideration, without any requirement of royalties, patents on the various devices that he was working on and had developed, justified the increase in salary.

Q. Were those approximately the same reasons for the voting of additional compensation in November, 1940?

A. With the additional reason that, commencing with the proceedings involving the hydraulic applicator, an interference trial was conducted in Oklahoma, and as a result I had negotiated, through the efforts of Mr. Ballagh, what I considered a most favorable cross licensing agreement with the interfering party Barnes, which I felt was worth many thousands of dollars to the company.

The Court: We will suspend here until 2:00 o'clock.

(An adjournment was taken until 2:00 o'clock p. m. of the same day.) [151]

Afternoon Session — 2:00 o'Clock P. M.

Mr. Lamont: Counsel, how about this list that I gave you when Mr. Bunch was on the stand?

Mr. Bednar: I forgot to look it over, but you can put it in evidence.

Mr. Lamont: All right. I will put it in evidence now. I have a carbon here, which, if satisfactory to the Court, I will offer the carbon to be marked as plaintiff's exhibit, the appropriate number.

The Clerk: That will be Plaintiff's Exhibit No. 19.

PLAINTIFF'S EXHIBIT No. 19

COMPANIES WHOSE TWO HIGHEST
SALARIED EXECUTIVES RECEIVE
LESS THAN \$50,000 PER ANNUM

Compiled from the roster of corporations listed on the Los Angeles Stock Exchange.

The Exchange roster was chosen as a desirable source of data for the following reasons:

(a) The list is representative of numerous types of California industry, particularly of the oil business. In character, the companies range from long-established, nationally known institutions to comparatively small enterprises.

(b) As measured in importance by capital invested and scope of operations, indicative of the responsibility carried by the executives, the list reflects a comprehensive graduation of business size, from very small to quite large undertakings.

(c) The Exchange constitutes a satisfactory cross-section of industrial organizations in California from which may be ascertained data on actual practice of corporations in fixing maximum remuneration of their executives.

(d) Lastly, because of Government requirements of companies listed on national security exchanges, sworn statements revealing such salaries are available in each instance in the records of the Securities and Exchange Commission on file at the Los Angeles Stock Exchange.

The statistics herewith in all cases were taken from the Securities and Exchange Commission records.

EXECUTIVE SALARIES, CORPORATIONS

Fiscal Year	Corporation	Two Highest Salaries	Capital and Surplus	Profit or Loss	Dividends Paid
12/31/41	Gladding McBean & Co.	\$49,673	\$7,447,062	\$ 603,984	\$159,908
12/31/40	Western Pipe & Steel Co. of Calif.	45,200	4,576,212	312,477	156,645
6/30/40	Hancock Oil Co. of Calif.	44,150	4,613,811	1,138,528	784,000
8/31/41	Consolidate Steel Corp.	44,000	4,841,381	667,518	373,246
12/31/40	Sontag Chain Stores Co.	40,120	2,128,971	225,931	141,889
12/31/40	Lane Wells Co.	38,500	2,206,900	605,977	522,000
12/31/40	Emsco Derrick & Equipment Co.	38,400	3,687,015	82,475*	-----
12/31/40	Ryan Aeronautical Co.	37,688	1,424,821	358,344	-----
12/29/40	Van de Kamp's Holland Dutch Bakers.	37,100	1,204,215	203,209	113,581
12/31/40	Los Angeles Investment Co.	32,950	6,262,240	161,474	-----
12/31/40	Puget Sound Pulp & Timber Co.	31,600	5,034,611	795,553	855,786
12/31/40	Bluc Diamond Corp.	30,060	2,201,131	55,936	145,863
12/31/40	Electrical Products Corp.	28,578	2,120,478	342,674	262,022
12/31/40	Universal Consolidated Oil Co.	24,530	1,612,734	228,190	99,977
12/31/40	General Metals Corp.	21,200	1,216,189	259,623	32,230
12/31/40	Pacific Clay Products Co.	21,037	1,454,661	53,236	-----
12/31/40	Taylor Milling Co.	21,000	2,421,223	197,589	100,000
12/31/40	Bolsa Chica Oil Corp.	15,675	1,034,417	47,907*	-----
12/31/40	Weber Showcase & Fixture Co.	14,822	2,060,724	58,692	17,494

* Figures in Red.

Executive Salaries Corporation—(Continued)

Fiscal Year	Corporation	Two Highest Salaries	Capital and Surplus	Profit or Loss	Dividends Paid
5/27/40	Solar Aircraft Co.	14,034	747,819	51,546	11,500
6/30/40	Menaseo Manufacturing Co.	14,000	873,021	190,137*
6/30/40	Roberts Public Markets, Inc.	\$13,000	\$ 631,205	\$206,252	\$43,905
12/31/40	Bandini Petroleum Co.	10,680	1,538,075	2,412	99,375
12/31/40	Holly Development Co.	9,650	721,569	51,691	36,000
12/31/40	Merchants Petroleum Co.	9,400	167,904	2,082*
10/31/40	Interoast Petroleum Co.	8,600	428,668	3,080
12/31/40	Lincoln Petroleum Co.	8,020	143,369	27,613*
12/31/40	Oceanic Oil Co.	6,650	256,502	6,555*	59,722
12/31/40	Nordon Corp., Ltd.	5,935	377,153	10,793
12/31/40	Mascot Oil Co.	5,400	329,492	4,789	25,000
12/31/40	Rice Ranch Oil Co.	5,013	284,502	12,089	20,000
12/31/40	Occidental Petroleum Co.	4,895	140,785	418*
12/31/40	Holly Oil Co.	4,800	399,505	10,092*
2/28/41	Mount Diablo Oil, Mining & Development Co.	3,950	139,201	13,874	23,374
12/30/41	Patterson-Ballagh Corp.	53,666	201,023	22,999

[Endorsed]: Filed July 3, 1942.

Mr. Lamont: I might add that the witness is still in Court, so if there is anything the Court doesn't understand we can put him back on.

Mr. Bednar: Who prepared this?

Mr. Lamont: Mr. Bunch prepared it.

Mr. Bednar: Mr. Burrell.

HOWARD BURRELL,

recalled.

Direct Examination,

resumed.

By Mr. Bednar:

Q. Mr. Burrell, I believe this morning you testified to your reasons for approving additional compensation for Mr. Miller and Mr. Ballagh, or for Mr. Ballagh, rather. You mentioned various inventions and other devices. Do you recall [52] the other devices?

A. There were other devices he was working on at the time, one of which he referred to, a pipe wiper, for example. The sales of that have doubled each year since it was offered on the market. At that time there hadn't been a patent on this device, and the patent was issued in February, 1942, and it was under application at the time. And then he developed other items of lesser importance. I attributed greater importance to the hydraulic applicator and the protector.

Q. During the years 1939, 1940, and up to September 10, 1941, have you had any disagreement

(Testimony of Howard Burrell.)

with Mr. Ballagh and Mr. Miller concerning the affairs of this corporation?

A. You mean Board meetings?

Q. Yes.

A. Well, there have been several things that I haven't seen eye to eye with them on. They brought up at one time the question of taking cash that represented reserves for taxes or royalties and investing them in interest-bearing securities, and Mr. Dulin and I both opposed that, and their proposal was abandoned. They carried an item of good will on the balance sheet in the amount of some \$80,000, that I thought should have been charged to the earnings surplus account, and a rather small item of a similar nature—I forget the name of it—an installment equipment item of about \$1100. Mr. Dulin and I suggested that those be [153] written off, and finally we were able to succeed in that. And we never approved very much of the accounting methods that were being pursued by the company. They did not set up on their operating statements accruals for taxes or for royalty items. So the month to month operating statements did not correctly reflect or furnish a complete picture of the company's program. At the end of each year we would receive an auditor's statement, which showed the earnings in a different amount, as a result of the deductions of these reserves, that I felt should have been included in the monthly statements. In February of this year, at the organization meeting of the Board of Directors, Mr. Dulin and I made the sug-

(Testimony of Howard Burrell.)

gestion, and it was ordered that these changes be made in the accounting practice. I wouldn't say that these were controversies with Mr. Ballagh or Mr. Miller, but they were at least disagreements with their methods of procedure.

Q. How much time have you devoted to the affairs of the Patterson-Ballagh Corporation in the year 1939, for example, approximately?

A. I would say in 1939 I devoted at least 75 to 100 hours.

Q. And in 1940, or can you tell me that?

A. In 1940, probably the same amount.

Q. And in 1941?

A. Considerably more in 1941, due to certain litigation.

Q. At every meeting at which you were present in 1939, [154] 1940 and 1941, did you, after the meetings, go through the factory and see the new devices that had been discussed?

A. I don't believe—I wouldn't say I did that at every meeting. I customarily did it. On a few occasions I did not do so.

Q. Do you recall any occasions when Mr. Dulin was invited to go down and make an inspection of the factory, and he did not do so?

A. I took a trip through the factory one time with Mr. Dulin, and there were other occasions when we could have gone through, should we desire, but we didn't do so. I do know he went through once when I was along.

Q. Did Mr. Dulin frequently announce at the

(Testimony of Howard Burrell.)

various meetings when he arrived that he would like to get the meeting over so that he could go early?

A. Mr. Dulin was busy with other matters; he was president of Byron Jackson Company and other matters, and he was involved, so that he couldn't spend too much time at the meetings.

Q. Have you ever acted as personal attorney for Mr. Ballagh or Mr. Miller?

A. I never acted as personal attorney for Mr. Miller. Mr. Ballagh, or Mrs. Ballagh, had a small collection made a year ago, approximately, I believe, that they handled through a young man in my office, which was done with very little effort and didn't amount to a great deal. [155]

Q. When you received from Mr. Miller and Mr. Ballagh the various demands that are set forth at the end of the complaint as exhibits, what action did you take?

A. I got in touch with Mr. Miller and ascertained from him that Mr. Ballagh was in the Mid-Continent, and in view of the fact that Mr. Ballagh was away I wrote to Mr. Dulin a letter, advising him that as soon as all the interested parties could be assembled I would attempt to arrange a meeting at which his suggestions would be considered.

Mr. Lamont: I won't make any point about this not being an original.

Mr. Bednar: I wonder if I could read this into the record. It is the only copy we have.

Mr. Lamont: Suppose you read it into the record?

(Testimony of Howard Burrell.)

The Witness: May I see the letter?

Q. By Mr. Bednar: Is this the letter that you referred to? A. Yes. [156]

Mr. Bednar: The letter reads as follows:

“August 15, 1941

“Byron Jackson Co.,
P. O. Box 1307,
Arcade Station,
Los Angeles, California.

Attention Messrs. E. S. Dulin, W. M. Beadle and
W. H. Weise.

Re Patterson Ballagh Corporation

Gentlemen:

“We wish to advise that there has been handed to this firm for attention your recent communications addressed to Patterson-Ballagh Corporation and to its officers, directors and shareholders in respect to the matter of the institution of proceedings against DeMont G. Miller and J. C. Ballagh for the purpose of recovering from them certain alleged excess compensation mentioned in said communications.

“It is desired to report that the matter of calling and holding a meeting of the board of directors of Patterson-Ballagh Corporation for the purpose of considering and acting upon the requests and demands contained in your communications is under consideration, and that it is expected such a meeting will be called as soon as arrangements can be made to assure that all interested persons will be in attendance.

(Testimony of Howard Burrell.)

“This firm has no authority to express an opinion as to the correctness of the statements and allegations contained in your communications, and this letter is written solely for the purpose of advising you of the matters hereinbefore [157] mentioned.

“Very truly yours

MUSICK & BURRELL

By HOWARD BURRELL.”

Q. By Mr. Bednar: Mr. Burrell, did you receive from Mr. Dulin this letter of March 27, 1940, which is in evidence here?

A. I have it here. It hasn't got an identification number here.

Mr. Lamont: That is a photostat. The original is in evidence.

Mr. Bednar: It is in evidence here as Defendants' Exhibit I.

The Witness: I did.

Q. Do you know what the sales were in 1939?

A. The statements of the company give them as \$336,000.

Q. Do you know where Mr. Dulin obtained the figure of \$232,000? A. I do not.

Q. Do you remember any episode at the meeting where Mr. Dulin asked about the sales of protectors, and Mr. Ballagh opened a drawer and drew out some papers and gave a figure of \$232,000?

A. No; I wouldn't recall that.

(Testimony of Howard Burrell.)

Q. I show you from the minutes a letter included in the [158] minute book, following the meeting of June 27, 1939, such letter being dated June 23, 1939, addressed to Patterson-Ballagh Corporation, attention of Mr. D. G. Miller, and composed of two pages, and signed by yourself. You sent that letter to Mr. Miller? A. I did.

Q. Are you of the same opinion today as you were in that letter?

A. Subject to correction by Judge Hollzer, I am. Mr. Bednar: That is all.

Cross-Examination

Q. By Mr. Lamont: Mr. Burrell, I understood you to testify that you handled the sale of the Patterson stock to Mr. Miller. Is that correct?

A. I did.

Q. I now refer you to Plaintiff's Exhibit 15-D, and ask you whether at that time you were familiar with that agreement? A. I was not.

Q. What was the first time you saw that agreement?

A. Two or three weeks prior to the time of the preparation and sending of that letter which Mr. Bednar just mentioned, in June, 1939, at which time I procured all of the files of Patterson-Ballagh Corporation with regard to this controversy involving the repudiation of the license agreement. [159]

Q. Who gave them to you?

A. As I recall, Mr. Ballagh brought them in to me.

(Testimony of Howard Burrell.)

Q. Did you discuss this agreement prior to that time with either Mr. Ballagh or Mr. Miller?

A. No, I did not.

Q. Who employed you in regard to putting the stock sale through.

A. Mr. Miller and Mr. Patterson and Mr. Ballagh appeared at my office one morning and said that negotiations were being conducted with Mr. Miller to buy Mr. Patterson's stock, and asked if I would prepare the note and option agreement.

Q. Who paid your bill?

A. Mr. Patterson.

Q. When did you become general attorney for the Patterson-Ballagh Company?

A. After June, 1939, several months, a retainer arrangement was agreed upon.

Q. But you did certain work for them prior to that time, did you not?

A. Yes, in association with Lyon & Lyon, excepting for the one matter of amending the by-laws.

Q. Lyon & Lyon were never their general attorneys, were they?

A. I don't know as they ever had any general counsel other than Lyon & Lyon. I think Mr. Caughey, of Lyon & Lyon, [160] advised them in patent matters.

Q. They are patent lawyers, aren't they?

A. That is correct. But I know Mr. Caughey handled their matters for them. I know Mr. Caughey handled several suits for them.

(Testimony of Howard Burrell.)

Q. Anything else?

A. I know Mr. Caughey and Mr. Ballagh were very close socially, and I know they discussed the business of the company, and I assume Mr. Caughey would do what civil work they had done.

Q. You don't know that they were ever paid a general retainer, do you?

A. I do not know.

Q. I believe you testified, with regard to the meeting of March 18, 1940, I believe it was, at which Mr. Ballagh's salary and Mr. Miller's salary was increased, that you voted in favor of the increase of Mr. Miller's salary because Mr. Dulin had no objection?

A. I said that was one of the factors taken into consideration.

Q. Did you take that into consideration in regard to raising Mr. Ballagh's salary?

A. I did.

Q. What other elements did you take into consideration as far as Mr. Miller was concerned?

A. The fact that he had taken over the production [161] phases of the business of the company, had, I understood, installed certain efficiencies, both in the plant and in the office, had made or was contemplating at the time, certain plant improvements, some of which were consummated and some of which were not, was working on devices for the company that they would receive royalty free, and there had been an improvement in the ratio of current assets to current liabilities, a slight improve-

(Testimony of Howard Burrell.)

ment, by the end of 1939. The ratio was approximately 5 to 1 at the end of 1938, and approximately 10 to 1, I believe, at the end of 1941. And that progress was going forward during this period.

Q. Of course you didn't take into consideration the progress in 1941 in fixing salaries in 1940, did you?

A. No, but that scale of improvement was going on; it was in progress; it was about half way through.

Q. When it came to an actual vote at those meetings, you never have voted against either Miller or Ballagh, have you?

A. There have only been two meetings at which I was—I wasn't present at the meeting of August, 1939.

Q. I asked you, at the meetings which you attended, did you ever vote against either of them?

A. I have not.

Q. If I get your testimony correctly, Mr. Burrell, you figured—if I am not correct in this regard, correct me—you figured that the increases were warranted on account of [162] the inventions made by Mr. Ballagh; is that correct?

A. Not alone. That was one of the factors.

Q. Was that one of the principal factors, in your mind?

A. It was a substantial factor.

Q. Who owned the inventions at the time?

A. They had either been transferred or were being transferred, or he had indicated that he would

(Testimony of Howard Burrell.)

transfer them to the corporation. I don't know which inventions you are talking about.

Q. I am talking about the ones that Mr. Ballagh claims he invented, and the ones you took into consideration in regard to this salary raise.

A. For example, the pipe wiper—

Q. When these inventions were originally made, whom did they belong to? A. Ballagh.

Q. And is it your position that until they were transferred to the company they still belonged to Ballagh?

A. Yes. Mr. Patterson, for example, had made a patent some four or five years previously, which he took in his own name and refused to recognize the company as having any interest in it of any character.

Q. I take it, then, that some of these increases were in lieu of royalties; is that true?

A. Yes—it was distinctly to the advantage of the company to compensate Mr. Ballagh and Mr. Miller on a salary [163] basis which was flexible, rather than on a royalty basis, which would exist for the life of the patent, binding the company, as it had been bound before by the license agreement I testified about earlier.

Q. The ordinary royalty agreement would have been flexible, would it not, to the extent that it would have gone up and down with the number of sales of the device?

A. It would be flexible from the standpoint of sales, but not the amount. The company was forced

(Testimony of Howard Burrell.)

out of the export business practically by the Byron Jackson Company on that contract, because it wasn't flexible.

Q. You have stated that that was one of several factors? A. I said a substantial factor.

Q. How would you have figured the royalties had you taken the other course and provided for royalties? How would you have figured the values of these patents?

A. The best illustration of that can be shown by the cross license agreement with Barnes and the company, covering the hydraulic applicator, where a royalty of 25% for each protector put on a drill pipe is paid.

Q. What do you take into consideration in figuring what a royalty should be?

A. The monopoly created by the device.

Q. What else?

A. The commercial value of the device.

Q. How do you determine that? [164]

A. By its success in the field into which it is offered.

Q. What else do you consider?

A. The gross profit that is obtainable from the manufacture of the device.

Q. Anything else?

A. The extent of the field in which the device may be usable.

Q. What else?

(Testimony of Howard Burrell.)

A. And the benefit conferred upon the purchaser of the device.

Q. Now let us take the pipe wipers, Mr. Burrell. How much did you take that into consideration in fixing these raises?

A. That was taken into consideration. As I said before, the lip protector and the hydraulic applicator were more important, in my mind.

Q. What were the gross profits that were being derived from the pipe wipers?

A. About 80%. They were selling at five times cost.

Q. 80% of what?

A. The item sold around \$30, and, as I recall, it cost around \$5.

Q. Did you figure at all the net profit?

A. In a general way. I know the net profit on the non-protector items. As to the net profits on the protector items, I know that from talks with Mr. Bal-
lagh, in connection [165] with the business affairs of the company.

Q. You don't mean the actual amount?

A. I don't mean from the standpoint of cost accounting. I mean from general discussions with the officers of the company.

Q. You don't mean actual or total?

A. No; I mean percentage.

Q. How about the line guide?

A. The line guide was not invented by Mr. Bal-
lagh. They were paying royalty on that to another inventor. You mean the wire line wiper?

(Testimony of Howard Burrell.)

Q. How about the tubing protector?

A. The tubing protector I know very little about. It is nothing but a small drill pipe, with small protectors, or tubing, that is all.

Q. Did you know what the profits were from that item?

A. I couldn't tell you that. The item only sells, as I understand, in small volume. There is a new type tubing protector which has just been completed, I believe, by Mr. Miller.

Q. Have you any knowledge of the net profits derived from any of the articles sold by this corporation?

A. It would be impossible to ascertain that without cost accounting.

Q. You didn't know that at the time when you voted these raises? [166]

A. No. I knew there was a larger gross profit—

Q. And you don't know it now?

A. I know there is more net profit, yes. What I mean is, I couldn't segregate the net profit on every item made by the company during the year ending November 30, 1941, without cost accounting.

Q. And the same would apply to 1940 and 1939?

A. Each year, yes.

Q. Then you never suggested, as counsel for the company, an additional operating agreement with these gentlemen having to do with compensation for inventions?

A. I thought it was particularly adverse to the

(Testimony of Howard Burrell.)

interests of the company to allow these gentlemen to take patents out and have them enter into royalty agreements with the company on them, so I have not recommended them.

Q. I believe you mentioned this lip protector as being an important element. Did the adding of the lip add anything to the size of the business in regard to protectors?

A. Not for the protector business, but it replaced the old protector entirely, it having many advantages over the old protector. It gives control of the protector market. This company now sells 75% of the protectors sold over the world.

Q. But it didn't increase the protector business materially?

A. No, because the protector business throughout the [167] world was not increased.

Q. Mr. Burrell, from your knowledge of the company, what would the monthly purchases amount to, on an average?

A. I would say approximately 20% more or less of the sales; possibly 15%.

Q. You are talking about gross sales?

A. Yes. There is a small differential between net and gross sales in this company anyway.

Q. Yes, I understand. You commented also, I believe, in regard to raising Mr. Miller's salary, that there had been some increase in efficiencies. Can you be more specific in that regard?

A. There were a number of employees in the office, and the number of employees was reduced, and

(Testimony of Howard Burrell.)

the same work was accomplished by those remaining. In the plant two new presses were installed and the plant equipment was rehabilitated and the plant renovated, and it was obvious from those activities that the efficiency of the shop had been improved.

Q. Those would have been increases in efficiency that should have been accomplished by any executive officer, irrespective of raises in salary; isn't that true?

A. I believe that is true. He accomplished them, though, and they hadn't been accomplished before by his predecessor.

Q. What personal investigation did you make of these matters? [168]

A. I practically lived with the applicator for four years.

Q. During what time?

A. From 1934 to 1938.

A. How about the others?

A. That was the manual applicator. Then the last two years of that period I was working on the hydraulic applicator. They are two different types of devices.

Q. What investigation did you make of the tubing protector?

A. I said I knew very little about it.

Q. How about the pipe wipers?

A. The pipe wiper—I talked with Mr. Ballagh, the sales manager of the company, on a number of occasions, and I found that sales had doubled each year that had been on the market. From my investi-

(Testimony of Howard Burrell.)

gations. I understand they carry about 80% gross profit, and are becoming a more and more acceptable item.

Q. You mentioned patents. Have you received any patents?

A. I have not received a patent. I understand the application is pending. That is all I know about it.

Q. You don't know as yet whether that is a patentable device?

A. I know it is not patented. The application is pending. [169]

Q. I said "patenable."

A. No, I wouldn't know.

Q. At the time you were discussing these raises did you call anyone else's attention to the value of the inventions?

A. At what time, do you mean?

Q. March or November—any of the three times involved in this case.

A. At practically every meeting Mr. Ballagh had there lists of these devices, prices for them, and on occasions we would ask him what percentage of his sales were non-protector and what were protector sales, and I assume from the figures he gave and the fact that these manuals were there and in everybody's possession, if they cared to look at them, that we all knew about these various devices.

Q. You didn't call Mr. Dulin's attention at the time of these salary raises to the value of the inventions, did you?

(Testimony of Howard Burrell.)

A. In the meeting of December 3rd, at the meeting which was adjourned—If I may see the minute book—it was a meeting adjourned from November to the early part of December, because of Mr. Dulin's absence, at the very first part of the meeting, and on account of his ability to return on the adjournment date. The meeting was originally commenced on November 29, 1940, and adjourned to December 3rd, so that Mr. Dulin could be in attendance. At the adjourned portion of the meeting Mr. Dulin asked Mr. Ballagh at considerable [170] length about what these other items were doing and how they were selling, and there was some discussion in that field, and I didn't think, at the conclusion of that, that it was necessary for me to point out to Mr. Dulin what the items were, because I thought he understood what they were.

Q. What was the date of that meeting?

A. That was December 3, 1940.

Q. That was after——

A. That was after the March meeting, but it was the one at which this bonus for the year 1940 was approved.

Q. The bonuses had been already fixed by the meeting of November 29th?

A. But which were being discussed in the meeting of December 3rd. The meeting was still in session.

Q. But the bonuses had already been passed?

A. Yes, sir.

Q. Let me get at it this way. But the actual resolution for the bonuses occurred November 29th?

(Testimony of Howard Burrell.)

A. That is correct. We were re-discussing it.

Q. In these meetings apparently you referred to discussions as to protectors and non-protectors. Did you discuss articles other than protectors as a class or group, or discuss them independently?

A. I don't know what you mean.

Q. I mean there were several items going to make up the gross sales of the company. One item is the protectors? [171]

A. Yes, sir.

Q. And there are a number of other items. There are pipe wipers, and tubing protectors, line guides, and in discussing these items other than protectors proper, did you discuss them as a group or did you discuss them separately item by item?

A. At times we discussed them as a group, and at times we would discuss them separately. I remember one meeting where Mr. Ballagh gave an extended report on the litigation that had been concluded successfully in Oklahoma, involving the hydraulic applicator and the cross license agreement with Mr. Barnes. I remember discussion of the wire line guide, which was a patented product on which we were paying a royalty, and discussion of various items. I don't mean to intimate that at each meeting we went into a discussion of each item of the company.

Q. You testified as to the number of hours you devoted to the service of the company. Did that figure apply to hours just spent on the premises, or did it apply in your office?

(Testimony of Howard Burrell.)

A. It applies to both on the premises and in my office, and conferences with Mr. Ballagh both at the office of Lyon & Lyon and in my office.

Mr. Lamont: Take the witness.

Mr. Bednar: No further.

Mr. Lamont: You won't want Mr. Bunch any further, will [172] you?

Mr. Bednar: No.

The Witness: Mr. Lamont, can I be relieved at a quarter past three? I have to be at a meeting at four. That will give you a half hour to decide?

Mr. Bednar: Call Mr. Morris. [173]

RAY WALDEN MORRIS,

called as a witness in behalf of defendants, being first duly sworn, testified as follows:

The Clerk: State your full name, please.

A. Ray Walden Morris.

Direct Examination

Q. By Mr. Bednar: How long have you worked for Patterson-Ballagh Corporation, Mr. Morris?

A. It will be 8 years in November.

Q. Have you worked as a salesman all the time in the field?

A. No, I was in the plant up until the 1st of April, 1937.

Q. And what territory were you located in after that date?

(Testimony of Ray Walden Morris.)

A. I was sent to Corpus Christi, Texas.

Q. How long did you remain down in Texas?

A. 10 months.

Q. From there where did you go?

A. To Shreveport, Louisiana.

Q. How long did you remain there?

A. 18 months.

Q. When you left Shreveport, where did you go?

A. I was transferred back to Los Angeles.

Q. And you have been here ever since? [174]

A. Yes, sir.

Q. Can you describe generally your duties as salesman?

Mr. Lamont: How would that be material?

Mr. Bednar: The only thing I want to show is the fact that he not only sells, but he takes the devices out in the field and puts them on, and watches them in operation.

A. We sell them and install them and keep checks on them to see how they work, and their life, and all of that, everything pertaining to that.

Q. When did you first hear of the hydraulic applicator transfers?

A. It was in 1939.

Mr. Bednar: I want to introduce these pictures showing the applicator with the transfer, just to give the court an idea of what I am talking about.

Mr. Lamont: If I understand, this is not a device sold by Patterson-Ballagh?

(Testimony of Ray Walden Morris.)

Mr. Bednar: No. But the evidence will show that without this device we would not be in business, as far as protectors are concerned. It is the means of applying a protector upon a drill pipe.

Mr. Lamont: You were in business, were you not, long before that device was invented?

Mr. Bednar: That is right. But somebody else came along with a better mousetrap, and we had to do something to save ourselves. I would like to introduce this one, for the time [175] being, as Defendants' exhibit next in order.

The Clerk: Defendants' Exhibit J.

Q. By Mr. Bednar: Now, I wish you would explain very briefly how this applicator works.

A. Take a protector and set onto this cone here, and the cone is put over this shelf here in the center, and the protector sits on this expander, and this sleeve is taken and placed on the cone, and this pushes the protector on up; this raises up and is pushed on up onto the sleeve, and the cone drops down inside, and the protector transfers on the cone, on up on this sleeve, and the sleeve has a locked place, and it fits on this, and has a lock on it so that the sleeve is held stationary while the protector is being pushed up on it. And the sleeve is slid any place on the particular joint of pipe, and is pushed off with the set screw. We have a flange here that works on here, that this set screw pushes against. That pushes against the protector with the sleeve, and pushes it on up. Here is a picture.

(Testimony of Ray Walden Morris.)

Q. The picture appears on page 1934 of the catalog that is in evidence.

A. It shows the entire operation. The machine here, it shows it placed into position, as I explained, and this shows the operation under way, the expander going up and pushing the protector up onto the sleeve. This shows the completed job here. Here it has been put over the drill pipe and has been pushed off here. That is the complete [176] operation right there.

Q. Mr. Morris, when did you first hear of the hydraulic expander with the transfer sleeve?

A. It was in the summer of 1939.

Q. And where were you at that time?

A. I was in Shreveport, Louisiana.

Q. Was there another similar device in use in that area at that time?

A. There was an applicator in use down there that installed protectors hydraulically, but did not have a transfer sleeve like ours, but it did install the protectors hydraulically.

Q. Can you tell the advantage of the transfer sleeve?

A. The main advantage of the transfer sleeve is that you can install the protector any place on the customer's drill pipe that he might want it.

Q. You don't have to stop drilling operations?

A. No; you install it on the rig, and can install it any place.

(Testimony of Ray Walden Morris.)

Q. Can you install the protectors away from the well?

A. Yes, and relieve them of any hazard of the old applicator, and at the same time leave them free to go in while it is going on.

Q. When you first obtained this hydraulic applicator that you have described, with the transfer sleeve, were there any customers that you obtained thereafter who had not been [177] buying from you, but were buying from competitors?

A. Yes, there was, in that particular territory.

Q. Can you name some of them?

A. Well, there would be F. H. Brown Drilling Company; the Standard Oil Company; Newark Oil Company, they called it; the Big West Drilling Company; the Delta Drilling Company; and the Penrod Drilling Company. Those are a few of the companies.

Q. Have the competitors that existed at that time since ceased using the hydraulic applicator?

A. As I understand, they have an injunction against them.

Q. Is there a similar applicator or comparable device in use in California?

A. Yes, there is.

Q. How does it differ from this device, if any?

A. It differs in that they place the protector on an expander that pushes in the protector on the sleeve, and it is removed from the sleeve on the drill pipe by hydraulic pressure.

Q. After the protector is placed on the sleeve

(Testimony of Ray Walden Morris.)

and carried over and put on the drill pipe, after the sleeve is put on the drill pipe, then in transferring the protector from the sleeve onto the drill pipe, this other device was a hydraulic method?

A. That is correct. [178]

Q. Whereas you use a mechanical method?

A. That is correct.

Q. Which is the faster?

A. From our experience, our method is the faster.

Q. Without this hydraulic applicator, can you estimate what the effect would have been upon your own personal sales of protectors?

Mr. Lamont: Just read that question.

(Question read by the reporter.)

Mr. Lamont: I object to the question as calling for a conclusion of the witness.

The Court: He may answer.

A. In my own personal sales, 90%.

Q. By Mr. Bednar: Your own personal sales would have been 90% less? A. Yes.

Q. What does the other 10% represent?

A. The other 10% would represent small operators, and it wouldn't make any difference particularly what method was used to install the protectors, and competitors' business.

Q. When did you first hear of the lip protector, Defendants' Exhibit D for identification?

A. That was in 1939.

Q. And where were you at that time?

(Testimony of Ray Walden Morris.)

A. I was in Los Angeles at that time. The particular place was in Arkansas, part of my territory. [179]

Q. Were you present at the first job when the lip protector was put on?

A. Yes; I installed the first one.

Q. What had happened just prior to that time?

A. A protector without lip had ruined the man's drill pipe and caused him to have three different twist-offs in three different days, and we either had to put lips or something to stop the grooving, or we wouldn't have a customer, as far as he was concerned.

Q. This was the first time a lip protector was used?

A. Yes, sir.

Q. Has that customer ever complained since then?

A. He is still buying the protectors.

Q. Has he had any grooving of his pipe since then, to your knowledge?

A. To my knowledge, he hasn't.

Q. Have you ever had a customer who has used the lip protector, and, after having used it, ordered protectors without it?

A. I have not, no, sir.

Q. Are you acquainted with Mr. Miller's wire line wiper?

A. Yes. We started to experiment on those in 1939.

Q. Are there any competing devices?

(Testimony of Ray Walden Morris.)

A. There is one competing device that I know of.

Q. In your territory how many of the wire line wipers in use do you estimate are sold by Patterson-Ballagh Corpora- [180] tion?

A. I would say 90%.

Q. You are acquainted with Mr. Ballagh's drill pipe wiper? A. Yes, sir.

Q. Are there any competitors?

A. Yes, sir; there is one competitor.

Q. In your territory, how many of the drill pipe wipers in use do you estimate are sold by Patterson-Ballagh Corporation?

A. In my territory, about 98%.

Q. When did you first hear of Mr. Miller's steel clad protector?

A. My first experience with it was in 1941.

Q. Is this the device you are referring to?

A. Yes, sir, that is it. I had heard of a trial and usage prior to that.

Q. Do you know of any competing devices?

A. Yes, sir; there is one competing device. It isn't in existence at present; it isn't being manufactured.

Q. From your experience in your territory, what has been the reaction of the customers who have used this device?

Mr. Lamont: I object to the question as incompetent, irrelevant and immaterial, and asking for the opinion and conclusion of the witness. How

(Testimony of Ray Walden Morris.)

does he know what reaction there has been? [181]

Mr. Bednar: Well, from what they tell him.

Q. By Mr. Bednar: Who, to your knowledge, uses these steel clad protectors?

A. Barnsdall.

Q. Where? A. At Cascade.

Q. What have they told you about the steel clad protector?

Mr. Lamont: I object to that as incompetent, irrelevant and immaterial.

The Court: Well, just one person——

Mr. Bednar: This is a new device, your Honor, and of course it may be one field, but it goes to show the prospects for the device. For instance, I expect to show by this witness that in this particular field they can't use any other protector except this one.

The Court: Well, he may answer.

A. Mr. Frehoda, drilling superintendent there, told me that they had more than paid for themselves in saving and tool joints, and the ones he had used on that, they dulled 168 bits, in an average of eight hours drilling time to each bit, and it had proven more than its worth to him, to the company, and Barnsdall wanted them in that particular field.

Q. By Mr. Bednar: What is there about that field which makes the use of this protector vital?

A. Well, the formation is very abrasive. There is a [182] very abrasive formation there, and if there is nothing on there to protect the tubes it

(Testimony of Ray Walden Morris.)

wears them down and they have to be rebuilt, built up or thrown away.

Mr. Bednar: You may take the witness.

Cross-Examination

By Mr. Lamont:

Q. Mr. Morris, how long did you say you have been employed by Patterson-Ballagh?

A. Since November, 1934.

Q. Were you employed during the period from January 1, 1939, until September 10, 1941?

A. Yes, sir.

Q. What was your salary or compensation?

A. My salary?

Q. Yes. A. \$200 a month.

Q. All during that period?

A. From 1939?

Q. January 1, 1939, to September 10, 1941.

A. I was getting \$180 a month.

Q. You mentioned a figure of 90% in regard to hydraulic applicators—I think it is 90%.

A. Yes, sir.

Q. What was your reason for saying 90%?

A. Due to the fact that our competitor had a hydraulic applicator—— [183]

Q. Do you base that conclusion upon any other circumstance?

A. We were referring to the hydraulic machine.

Q. I know what you were referring to, but did any other circumstance enter into your ultimate conclusion of 90%?

(Testimony of Ray Walden Morris.)

A. Well, not in that personal thing.

Q. You didn't have any fact or figures to support—

A. From my personal experience in the field.

Q. General observation?

A. From my own particular experience, and from what I was told by others.

Q. Anything else? A. No, sir.

Q. How many competitors were there as to hydraulic applicators? A. Two.

Q. Who were they?

A. That is the Bettis Rubber Company, and E. M. Smith, you are talking about.

Q. In this particular territory, now, you are talking of? A. Yes, sir.

Q. As a matter of fact, there were other hydraulic applicators, were there not?

A. Only one that I had any interference with.

Q. You are limiting all this to your territory?

A. Yes, the territory I have been in. [184]

Q. Was there another one?

A. I don't remember the name of the company. They were selling protectors in Louisiana.

Q. You knew Mr. Patterson, did you not, of Patterson-Ballagh? A. Yes, sir.

Q. As a matter of fact, he had a hydraulic applicator, did he not, a patent on one, and at one time refused to turn it over to Patterson-Ballagh?

A. That must have been when I was gone.

Q. You don't know one way or the other?

A. No, sir.

(Testimony of Ray Walden Morris.)

Q. How did you arrive at your 90% in regard to wire line wipers?

A. By my observations in the field and my selling in the field.

Q. Do you know what the gross sales by Paterson-Ballagh of wire line wipers amounted to in 1941?

A. No, sir; I haven't any idea.

Q. This chart apparently shows \$2,050.60 and total gross sales of over \$336,000.

A. They are a small priced article.

Q. You referred to drill pipe wipers, and you are still consistent, with 90%. Upon what do you base your 90% conclusion?

A. On my sales in the field and my observations around [185] the rigs.

Q. You had no facts and figures?

A. Only what I have been told by different operators.

Q. In other words, you arrived at your conclusion in the same way with regard to that item as you did with regard to the other items, did you not?

A. Yes, sir.

Q. How many other territories are there where wire line wipers and drill pipe wipers are sold, besides the territory you know about?

A. As far as my knowledge is concerned, they are sold almost universally wherever they are drilling.

Q. But you have no knowledge of the other territories, though?

A. No.

(Testimony of Ray Walden Morris.)

Q. How much do steel pipe protectors sell for per protector, steel clad protectors?

A. It depends on whether it is a 5-inch drill pipe or a 4½-inch drill pipe or a 3½.

Q. Give us the figures for some of those.

A. The ones that Barnsdall ran, \$36 apiece.

Q. There are not many of them sold, are there?

A. They probably bought 150.

Q. Apparently the gross sales of the company in 1941 amounted to only \$597.29. Do you know whether any were sold in 1940? [186]

A. No, sir, I do not.

Q. Apparently this chart doesn't show any sales in 1940.

Mr. Bednar: It was a new device.

The Witness: It was being worked up.

Q. And not at all, apparently, in 1939. You say you have been with the company quite a while?

A. Yes, sir.

Q. As a matter of fact, before this lip protector came into being you sold, over a great period of years, the other protector, did you not?

A. You mean the company or myself?

Q. The company. A. Yes, sir.

Q. And you personally, did you not?

A. From 1937.

Q. Any competitive items as to drill pipe wipers?

A. Is there?

Q. Yes, are there?

A. There is one company.

(Testimony of Ray Walden Morris.)

Q. One company, that is all? A. Yes, sir.

Q. And you are talking about your territory?

A. Yes, sir.

Q. How about the steel clad protector?

A. There is, or there was one competitor. I understand [187] they are not making them now.

Mr. Lamont: That is all.

Mr. Bednar: Mr. Ballagh.

The Court: We will have our afternoon recess now.

(Short recess.)

Mr. Bednar: Mr. Ballagh. [188]

J. C. BALLAGH,

a witness heretofore duly sworn, upon being recalled on behalf of defendants, testified as follows:

Direct Examination

By Mr. Bednar:

Q. Mr. Ballagh, from January 1, 1939, until September 10, 1941, have you ever voted at any meeting in favor of your own salary?

A. No, sir.

Q. During that period of time were notices of all the meetings sent to Mr. Dulin? A. Yes, sir.

Q. Directing your attention to the non-protector items that your company sold during that period of time, was the margin of profit on non-protector items substantially more than on protectors? A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. Will you give us a little bit of your background?

A. I graduated from the Colorado School of Mines in 1910 as a mining engineer and as a metallurgical engineer, and after graduation I went to Mexico and worked in a mining camp for a year, and returned to California and worked in the oil fields for something over a year at Maricopa, California. From there I returned to Mexico for a few months, and from there I went to Texas, and I remained in Texas for about 11 years, during which time I was in the machinery [189] business and in the oil tool business, and also in connection with the drilling of oil wells. And from there I went to Arkansas and drilled a number of wells. And from there I went to Oklahoma, and then I returned to California and went into the turbine pump business as an installer for Lane-Bowler Company. From that company I went to the Kimball Pump Company, for whom I worked about two years. And then I went to the Pomona Pump Company, for whom I worked about a little over a year. And from there I went to the Johnston Pump Company, and worked for that company a little over a year.

Q. When did you first meet Mr. Miller?

A. I think I met him at college, but I can't remember meeting him at school very much. The first time since that time was when I returned to California after being down in the Midcontinent. He

(Testimony of J. C. Ballagh.)

was then manager of the Lane-Bowler Pump Company, and he gave me a job installing pumps, where I worked for about three months. And then later on, after I worked for the Pomona Pump Company for a year, I went to work for him as a salesman, and worked for him for approximately a year.

Q. When did you first encounter the use of rubber industrially?

A. When I was working for the Pomona Pump Company, I found that that company was making quite a success in the sale of pumps in which rubber bearings were used. They were [190] making deep well turbine pumps, some of them of considerable depth, three and four hundred feet, and they had taken the rubber bearings as the basis of the main patent, and they were advertising the pumps and installing them, and doing a very fine job of selling the pumps, and the pumps themselves were doing a very fine job in the field, especially where sand was being pumped.

Q. As a result of that contact with the use of rubber industrially, did you make any effort to study the subject?

A. I had never heard of rubber being used, of the use of rubber in a rubber bearing, so I went to the library and got what books I could on rubber, and went to a number of rubber companies and talked to some of their men, to make a study of it, in so far as its use industrially was concerned.

Q. After your experience with the Pomona

(Testimony of J. C. Ballagh.)

Pump Company, when did you again come in contact with rubber used industrially?

A. The next time I ran into it was in connection with Mr. Bettis, who was working for the Johnston Pump Company as their engineer, and he had a patent that he had been trying to promote. He had had the patent with the Baash-Ross Tool Company, and with the Emsco Derrick & Equipment Company, and each of them had this patent for about a year, and he told me that they were not doing any good with it, that he had cancelled the Emsco license, and he said he was going to cancel the Baasch-Ross, because they weren't selling any. [191]

Q. How did your experience with the Pomona Pump Company fit in with your meeting with Mr. Bettis?

A. I studied his device, because I would see him when I would come into the office, and he would tell me of his patent, and it occurred to me that the application was very similar, that is, in an oil well there is a long drill pipe that rotates in the well, and in a turbine pump there is a shaft that operates down in the well, and I had seen the Pomona pump handling large quantities of sand and the rubber didn't wear out at all, and I just thought that if that same quality of rubber was put on drill pipe that was in the pump, it certainly might do some good and make some money.

Q. Was the quality of the Pomona Pump rubber a very high quality?

(Testimony of J. C. Ballagh.)

A. I believe it was as high grade rubber as was made at that time. It was very expensive, although there weren't an awful lot of them at that time. They were quite expensive, and it was a very fine grade of rubber. I have never seen a higher grade of rubber.

Q. How did you come to meet Mr. Patterson?

A. Mr. Patterson ran a retread shop in Los Angeles, and for a number of years he had been re-treading tires for me, and he made the best retread rubber that I had ever seen, and I got very fine mileage from them. And I had no facilities to make rubber, and I just figured that if I could make some sort of a deal with Patterson to make rubber [192] for me or get it made, I knew if I could get out and make it, that between the two ideas I could probably get into a much better job than I had with the Pump Company.

Q. Did you then form a partnership with Mr. Patterson?

A. I formed a partnership with Mr. Patterson. The two of us made a license agreement with Mr. Bettis, and that was in 1927.

Q. Was the Bettis protector similar to the non-lip protector here?

A. It was a much shorter protector and a larger diameter, but the principle was the same.

Q. Will you describe the first one put on the market, of the new protectors?

A. I was able to borrow one of these molds that

(Testimony of J. C. Ballagh.)

the firm of Baash-Ross had been using, and I told Mr. Patterson to take it over to where he was having his rubber made, and I went over there with him, and I got them to specify the very finest grade of rubber that could be made to work in this mold, and I had them make up about six of them, and I took them down to Long Beach, where the Jergins Trust Company was operated by a man I had known for many years back in Texas, and he gave me permission to put these on a well. And I was able to get them on with a great deal of difficulty, because we yet hadn't developed an expander that was satisfactory. But at the end of two or three days of operating, the protectors were just as good as new; they hadn't worn a [193] bit, and the drillers and superintendent were very enthusiastic about it, and he got permission to buy a whole string of them for the entire pipe.

Q. Prior to that time had the drill pipe been knocking holes in the casing?

A. They had been having trouble constantly with wearing the drill pipe, and also wearing holes in the casing, and there would be water break in, and they were having fishing jobs, and also having a bad time of it, because the wells were very crooked in those days.

Q. Then in March of 1928, I believe, the defendant corporation was incorporated?

A. Yes, sir.

Q. Will you give a short history of the gross sales of the business? A. Up to date?

(Testimony of J. C. Ballagh.)

Q. Yes.

A. Up to date there has been approximately \$5,000,000 or more of the protectors sold.

Q. What was the volume? Will you compare the volumes? In other words, was business good when you commenced?

A. Business started out very well. It just happened that I was just starting in the business at a time when drilling was reaching a very high peak, and especially in Long Beach and Santa Fe Springs.

Mr. Lamont: Won't one of your exhibits show this? [194]

Mr. Bednar: No, I don't think so.

Mr. Lamont: I thought you put one in evidence.

Mr. Bednar: I will try to shorten this up.

Q. By Mr. Bednar: Then your sales, I understand, were very good from the beginning down to about what time?

A. If I may refresh my memory on that—the sales reached the peak in 1929. During that year we sold something over \$1,111,000, and the following year our sales were \$636,000, and they were \$149 in 1932.

Q. \$149? A. \$149,000 in 1932.

Q. Was the Bettis patent declared invalid?

A. The Bettis patent was declared invalid, yes, sir.

Q. About when was it first declared invalid by the trial court? A. In 1931.

Q. After that time did competitors come into the field?

(Testimony of J. C. Ballagh.)

A. Yes; competitors started coming in in great numbers. Some 60 different firms started in the manufacture of protectors during the next three or four years.

Q. When did your company first start manufacturing non-protector items in quantity?

A. In 1932, out of our gross sales of \$149,000, our non-protector sales were \$100,000, which was retread rubber. Our protector sales had dropped from more than a million dollars down to less than \$50,000 during that period, down [195] to less than 5% of our sales, so, in order to keep our crews together and try and keep the organization from disbanding, we went into the manufacture of retread rubber. Mr. Patterson having been in that business, he knew something about retread rubber, so we converted our plant.

Q. How long did this depressed period of gross sales last? A. It lasted until about 1936.

Q. When did you start making and selling non-protector items other than retread rubber?

A. I think our first non-protector items were in 1936.

Q. Other than retread rubber?

A. Other than retread rubber.

Q. And what has been the object of these non-protector items?

A. We were trying to get up a volume of sales of items that weren't tied so closely to the drilling program. The reason our business fluctuated to

(Testimony of J. C. Ballagh.)

such depths, there was no leveling off to keep steady employment.

Q. Did you go into non-protector items for the purpose of leveling out the gross sales, so that they would not depend so much on protectors?

A. We were trying to get into some item, if we could, where there was a larger margin of profit. The price of protectors fell very sharply when the patent was declared invalid, so our margin was very meager, unless we had a large [196] volume.

Q. I understand on your previous testimony you testified that you had a factory in Los Angeles, and you had an assembly plant in Houston?

A. Yes, sir.

Q. Where do you have branch offices?

A. We have a branch in New Iberia, Louisiana; Shreveport, Louisiana; and Vickery, Texas; Ventura, California; Bakersfield, California; Avenal, California; Casper, Wyoming; and in New York City we have an office to take care of our export business.

Q. Do you have an office in Canada?

A. We have no office, but we have an agency and a service station with one of the hydraulic installation developments in Turner Valley.

Q. Just to clear up that point, at all these branches do you keep one of these hydraulic applicators for use in putting these protectors on the drill pipe in that area?

A. Yes; we have one at each one of those stations.

(Testimony of J. C. Ballagh.)

Q. Do you have any stations outside of the North American continent?

A. We have an agency in Trinidad, with a service man that travels through Venezuela and Colombia and Peru.

Q. During this period of time in question did your company sell items destined for places all over the world, that is, until the war came on? [197]

A. Yes; practically our entire line of items were sold in almost all drilling fields of the entire world, where we could sell, with the exception of Russia, where we haven't made any sales for about seven or eight years.

Q. Outside of these service stations you mentioned, do you have agencies in addition?

A. We have agencies with some small stock in many, many locations throughout the area; wherever there was oil well drilling going on, we tried to establish some sort of an agency or service which will be available.

Q. Have you personally traversed, covered the oil fields of the western hemisphere?

A. Yes. I have been in every oil field of any consequence in North America.

Q. Can you estimate, generally speaking, the percentage of protectors in the field during this period of time in question throughout the world, that were sold by your company?

A. I would estimate that we had sold 75%.

Q. How do you make that estimate in the fields outside of the western hemisphere?

(Testimony of J. C. Ballagh.)

A. Outside of the western hemisphere, there are about six or eight companies that do, I would say, 90% of the drilling. That is the Standard Oil of New Jersey; the Royal Dutch Shell interests; the Texas Company; the Socony Vacuum, and the various British firms that have buying agencies in New York; and the Argentine Government. I think that is the [198] most of them, and they buy through New York, first sending out inquiries, and every time there is a protector sale coming up I get a letter from their New York purchasing department requesting a quotation.

Q. And when you don't make the sale in question—

A. We follow it up; if we don't make the sale, we follow it up and find out if we lost it. And quite frequently the order is cancelled. There may be some change in the program. But if the order is not placed we get to know it very soon thereafter.

Q. Are the minutes that have been introduced here in evidence for the period from January 1, 1939, to September 10, 1941, correct to the best of your knowledge and belief?

A. To the best of my knowledge and belief, they are.

Mr. Lamont: I didn't get that question.

Mr. Bednar: I just asked him, were the minutes from January 1, 1939, to September 10, 1941, correct.

Q. By Mr. Bednar: Were you present at the meeting on October 18, 1938, at which Mr. Dulin

(Testimony of J. C. Ballagh.)

moved that you and Mr. Patterson be compensated at the rate of \$1500 a month? A. Yes, sir.

Q. And are the minutes of that meeting correct, to the best of your knowledge? A. Yes, sir.

Q. During the period of time in question, can you estimate how much of your time you devoted to the business [199] and affairs of the defendant corporation?

A. I devoted practically all the time during daylight hours to the corporation, and about at least three nights a week I worked at home on my various inventions on which I was working, and writing up my advertising copy, and also making the photographs that we used in our advertising and in our literature.

Q. Have you had a vacation during this period of time?

A. No, I haven't been having vacations.

Q. Have you made a considerable number of business trips?

A. Yes, I have; until Pearl Harbor, I spent at least a third of my time away. In fact at that time I was in New York, at that particular time.

Q. What have been your duties in reference to Patterson-Ballagh Corporation during the period of time in question?

A. Secretary and treasurer, and I acted as sales manager. I had charge of the advertising, the preparation of the advertising copy. I had charge of the various patent litigation that we had in the past, and during that one particular period we had

(Testimony of J. C. Ballagh.)

one case in Oklahoma, and I think we concluded another case in California that we had had running for some time.

Q. Did your company build up a reserve of rubber in view of the international situation?

A. Yes, sir. [200]

Q. When did your company start building that up?

A. About a year prior to Pearl Harbor the Eastern situation looked very dark to Mr. Miller and myself, and we had some cash on hand, and the price of rubber was quite reasonable, and we decided that, rubber being the basis of our business, it was a good time for us to maintain a good inventory. [201]

Q. Whose suggestion was it first that you build up an inventory?

A. I think it was Mr. Miller's.

Q. And, judging from your present stock on hand, on the basis of your doing business in the same manner, under the same policy, that you have done it the last two or three years, how long do you estimate the stock on hand that you have would last you, if the government didn't use it for other purposes?

A. I would say we could stay in business at least a year, or maybe a year and a half.

Q. Has your plant been rebuilt since Mr. Miller came into the business?

A. Yes. It was almost completely rebuilt, and

(Testimony of J. C. Ballagh.)

two new presses installed, and installed a number of new pumps, and our piping has been almost entirely replaced, and installed new rest rooms, and changed our warehouse, and improved our method of handling materials through the plant, changed our stock, making it much more efficient in operation than it was before.

Mr. Bednar: At this point I would like to read from the minutes the duties of the Secretary and Treasurer, from the by-laws. Section 6, appearing on page 24:

“The Secretary shall keep the minutes of all acts and proceedings of the Board of Directors and of the Stockholders done and had at their meetings, in books [202] provided for that purpose; he shall attend to the giving and serving of all notices for the corporation; unless the Board of Directors shall otherwise provide, he shall sign with the President, in the name of the corporation, all bonds, contracts and other obligations and instruments authorized by the Board of Directors, and when authorized by said Board, he shall affix the seal of the corporation thereto; he shall have charge of all records, books and papers pertaining to his office, and the corporate seal of the corporation, the certificate book and such other books and papers of the corporation as the Board of Directors may direct; he shall keep proper books of account and serve all notices required by law or the by-laws of the corporation. With the President or Vice-President, he shall sign all certificates of stock, and he shall in general perform all the duties

(Testimony of J. C. Ballagh.)

incident to the office of Secretary, subject to the control of the Board of Directors. He shall also perform all other duties required of him by law or these by-laws and such as the Board of Directors may from time to time impose upon him. At the expiration of his term of office, he shall deliver to his successor, or such other person or persons as the Board of Directors shall designate, all books and property of the corporation in his possession."

And then the Treasurer:

"The Treasurer shall have charge and supervision of the finances of the corporation. He shall receive, receipt [203] for and safely keep all its funds, and shall dispose of them only in the manner authorized by the Board of Directors; he shall at all times keep a full and complete and accurate record of the funds of the corporation and shall deposit the same to the credit of the corporation in such bank, banks or depositaries as the Board of Directors may designate; he shall, when so authorized by the Board of Directors, sign with the President or Vice-President, or such other person or persons as may be designated by the Board of Directors, all bills of exchange and promissory notes of the corporation. When ordered by the Board of Directors, he shall render a statement of his accounts. He shall at all times be under the control of the Board of Directors, and generally shall perform all duties incident to the position of Treasurer, and all other duties that may be required of him by law, and these by-laws, and that said

(Testimony of J. C. Ballagh.)

Board may from time to time impose upon him, at all times keeping full, complete and accurate accounts thereof. At the expiration of his term of office, he shall deliver all moneys, papers, records and property of the corporation in his possession, or under his control, to his successor, or to such other person as the Board of Directors may designate."

Q. By Mr. Bednar: Now, Mr. Ballagh, I don't believe this chart has ever been explained, and I would like to have you explain it. That chart, incidentally, is Defendants' Exhibit G. [204]

A. This chart represents the sales in 1939, 1940 and 1941 of the three leading non-protector items that are my inventions. It also shows, in the accumulation of the three items, the total, that has been brought up to the 1st of June, showing the continuation of the same steady trend upwards. It shows that during 1938, in the case of the tubing protectors, the sales for the year had been \$138.60; at the end of 1939 it had reached \$3294.00; at the end of 1940 it had reached \$8527.20; and at the end of 1941 it reached \$16,691.40.

Mr. Lamont: Gross sales?

A. Gross sales.

Q. By Mr. Bednar: In other words, it doubled each year?

A. Each year it a little bit more than doubled. The sucker rod protectors, the sale in 1938 was \$63.00, and \$441.00 in 1939, and \$1578.50 in 1940, and \$2073.50 in 1941. The sales did not quite double in that case. However, in 1940 they had

(Testimony of J. C. Ballagh.)

quite considerably more than doubled. In the sale of the pipe wipers, there was no sale in 1938. There was \$12,296.00 in 1939; in 1940 there was \$30,189.50; and in 1941 it was \$43,862.26, not quite double in that case, but more than double 1939. And I have accumulated the three items together, and have brought in their totals, showing sales in 1938 of \$201.60, a rise to \$16,232.60 in 1939, and to \$56,627.80 at the end of 1940, and at the [205] end of 1941 they were \$119,264.90; and in the middle of 1942 they had reached \$143,124.10, which is right close to the present time. I put the last period in to show the trend of the three items as still continuing on upwards.

Q. Does your company sell any products at the present time except on priority orders?

A. No. I think everything we sell is on some sort of a rating.

Q. I believe on your first examination you testified that Mr. Armington worked for the company only part time? A. Yes, sir.

Q. How was that?

A. He has a business of his own which he has operated for many years, and which I think he was operating the same business when he started to work for us, if I remember right. I am not quite sure.

Q. What are Mr. Armington's qualifications? What does he specialize in?

A. He is an assistant engineer to me. We call him our engineer. He follows through on the

(Testimony of J. C. Ballagh.)

various devices on which we work. He is out in the field and watches the machines we are running. He watches operations in the plant, and he checks on our costs for us.

Q. Have you had disagreements with Mr. Armington? A. Yes, quite frequently.

Q. Of what nature? [206]

A. But very friendly. We never have anything except friendly disagreements. Oh, a lot of things about the way the business is run, about the duties of certain individuals, about the design of certain of our products, about the pay of some certain persons.

Q. Who first recommended Mr. Burrell to your company?

A. Lyon & Lyon, our permanent attorneys in Los Angeles, who have been doing our patent work.

Mr. Bednar: I am going into these inventions again, your Honor.

Q. By Mr. Bednar: First of all, Mr. Ballagh, I would like to direct your attention to the hydraulic applicator, which is already in evidence here as Defendants' Exhibit J. Are there any parts of a hydraulic applicator present in court here?

A. Yes; there is one transfer sleeve.

Q. Now, with the aid of these pictures which I hand you and the picture which is already in evidence, and this transfer sleeve, will you explain how this hydraulic applicator works?

A. The casing protector is first installed in the hydraulic machine. The protector is pressed over

(Testimony of J. C. Ballagh.)

this shaft, and then this cone is placed over the protector, and then the transfer sleeve is placed over the cone. The transfer sleeve is made so that it will just fit on the edge of this cone. It then stands up in the hydraulic machine as shown [207] in photograph B, I think, part of the same exhibit.

The Court: Have these ever been marked?

Mr. Bednar: May I interrupt for just a moment and have those marked?

The Court: You had better, if you want us to be able to understand the record.

The Clerk: Do you want these marked as one exhibit?

Mr. Bednar: All one exhibit.

The Clerk: They will be Defendants' Exhibit K.

A. The protector starts out a very small diameter and extends to two or three times its size by the pressure of the dog pushing it up, and when it gets on the sleeve, you then turn the latch, and the sleeve, with the protector mounted thereon, can be lifted and carried, so that we can carry a protector mounted. The protector is under terrific tension, and the hole through the center of the sleeve is larger than the tool joint. If this is the tool joint, we can slide it onto the tool joint, onto the drill pipe, anywhere along the pipe that we want to locate it. It is about 30 feet long, and some customers like them in the middle and some near the tool joint, and when we got it to the point we want

(Testimony of J. C. Ballagh.)

it, we take a wrench, that is, two wrenches, and this starts to move, to slip the protector over the edge, and as this starts over the edge, then the pressure starts to release, and that pushes that off and upon the protector, just to the edge. All we need to do is turn this a couple of times, and [208] the protector will pop off, as shown in some of these other pictures. It is a very simple way of putting a protector on. With these large protectors, there will be sometimes six and eight tons of energy stored in that. Then K-1 shows the protector just almost on the sleeve. On K-2 the protector, with the sleeve attached, has been taken away from the machine. In K-3 the protector is slipped over the tool joint.

Q. Let me ask you one question at this time: In K-3, is that a much larger protector than the one we have?

A. No; that will be this same size protector.

Q. The same size as what?

A. It will be, very probably, the same as this protector.

Q. The same as Exhibit C for identification?

A. The same internal diameter, probably one of a little smaller external, but this is a 4-inch tool joint, you can tell by the proportion of it, that it is slid over, and then in K-4 the proector is located or is supposed to be on the tool joint. The man starts to screw the protector off, which he does with a speed wrench, starts to turn it off, and it starts to curl off, and then when he gets over there and he has to hold this sleeve back to keep it from being

(Testimony of J. C. Ballagh.)

thrown back maybe 15 or 20 feet, he has to hold the sleeve. It just throws itself off. In a matter of seconds, it just goes off so fast that it is maybe a hundredth of a [209] second, and it pops off, and you can hear it pop for a quarter of a block, and, as far as I know, it is the only application of rubber where rubber is held in location industrially by its own utility; I know of no other service in any industry that I have ever heard of.

Q. Did you file applications on the hydraulic applicator? A. Yes, sir.

Q. About when were those filed?

A. I think it was in 1939; it was in 1939, on the first application.

Q. Did you file a second application?

A. The second was filed in 1940, in September.

Q. And on the first application did you encounter an interference proceeding? A. Yes, sir.

Q. Was that interference proceeding concluded by cross license agreement between the defendant corporation and the Bettis Rubber Company?

A. Yes, sir.

Mr. Bednar: I have a duplicate original here but it is from the files of Lyon & Lyon, and it is their only copy, and I would like to insert a copy.

Q. By Mr. Bednar: Do you know whether any claims have been allowed on the hydraulic applicator?

A. I don't know. I don't think they have, so far. [210]

Mr. Lamont: No objection.

(Testimony of J. C. Ballagh.)

Q. By Mr. Bednar: Are the applications still being pursued? A. Yes, sir.

Mr. Bednar: I offer a copy of this agreement in evidence as defendants' exhibit next in order, and I might state the substance of the agreement at this time. It is agreed between Bettis Rubber Company and Patterson-Ballagh Corporation—the Bettis Rubber Company also has this other application, that caused the interference proceedings, and each party cross licenses the other party to use the device described in the application, free of charge, with one exception, that in the event that the Bettis Rubber Company uses the mechanical method of slipping the protector off of the transfer sleeve onto the drill pipe, then they must pay Patterson-Ballagh Corporation 25 cents for each rubber protector so placed in position on the drill pipe. On the other hand, if Patterson-Ballagh Company uses the Bettis hydraulic process for transferring the protector from the transfer sleeve onto the pipe, then Patterson-Ballagh Corporation pays 25 cents for each protector so placed in position. Both companies use the hydraulic method for putting the protector onto the transfer sleeve in the beginning. It is only in the method by which the protector is removed from the transfer sleeve onto the drill pipe that the difference exists, and by reason of this agreement the [211] Patterson-Ballagh Corporation uses this hydraulic applicator with the mechanical method of releasing

(Testimony of J. C. Ballagh.)

the protector from the sleeve onto the drill pipe, free of charge.

The Clerk: Is it admitted, your Honor?

The Court: Yes.

The Clerk: Defendants' Exhibit L.

DEFENDANTS' EXHIBIT L

AGREEMENT

This Agreement entered into this 18th day of October, 1940, by and between Bettis Rubber Co. Ltd., a California corporation, hereinafter referred to as Bettis, and Patterson-Ballagh Corporation, a California corporation, hereinafter referred to as Ballagh:

Witnesseth:

Whereas, Bettis represents it is the owner, by an instrument in writing, of the following applications, together with the right to grant licenses thereunder:

Burt S. Minor, Filed August 30, 1937, Serial No. 161,599, for Hydraulic Expander and Applicator for Short Elastic Tubes;

Barnes and Minor, filed February 1, 1939, Serial No. 254,026, for Means for Applying Expansile Collars;

Barnes and Minor, filed July 25, 1939, Serial No. 286,410, for Method and Means for Positioning Expansible Collars on Pipe or the Like;

(Testimony of J. C. Ballagh.)

Aubrey W. Masseur, filed July 26, 1939, Serial No. 286,595, for Method and Apparatus for Applying Protectors to Well Pipe; and

Whereas, Ballagh represents it is the owner of the following applications, together with the right to grant licenses thereunder:

James C. Ballagh, filed May 29, 1939, Serial No. 276,487, for Process and Apparatus for Applying Protectors to Drill Pipe;

James C. Ballagh, filed September 27, 1940, Serial No. 358,701, for Process and Apparatus for Applying Protectors to Drill Pipe; (This is a divisional application of Serial No. 276,487); and

Whereas, said application of Bettis, Serial No. 254,026 is at present involved in an Interference No. 78,231 with said application of Ballagh, Serial No. 276,487; and

Whereas, Bettis has moved to add to said Interference No. 78,231 its other applications Serial Nos. 161,599, 286,410 and 286,595, and

Whereas, the aforesaid applications of both Parties will undoubtedly be involved in said Interference No. 78,231, or other interferences to be declared, and

Whereas, it is the desire of the parties hereto that an agreement be entered into, whereby, Interference No. 78,231 may be terminated, the declaration of other interferences be prevented, patents is-

(Testimony of J. C. Ballagh.)

sued on said applications to the Party having priority of invention as to the various claims contained therein, and said Parties shall both have rights under the respective applications or patents to be issued thereon;

Now, Therefore, in consideration of the mutual covenants of the parties as hereinafter expressed, the parties hereto agree as follows:

I.

Said parties shall examine or cause to be examined the said applications of the respective parties, securing all information as to dates of conception, reduction to practice, etc., and shall thereafter determine what application shall be given priority in Interference No. 78,231.

II.

In case any of the remaining applications hereinabove identified and not involved in said interference, or any of the claims thereof, conflict, a determination shall be made from said examination as to what applications have priority and to whom a patent for the inventions disclosed therein should be issued; all possible means shall be taken to eliminate conflicts in the Patent Office and to assure that patents are issued upon the applications which have priority of invention.

III.

That the parties shall execute concessions of priority or any other documents or papers necessary

(Testimony of J. C. Ballagh.)

to terminate said interference, and to cause patents upon said applications to be issued to the parties who shall have been determined to have priority of invention.

IV.

Bettis grants to Ballagh and Ballagh grants to Bettis a personal, nonexclusive license under the aforesaid applications and patents to be issued thereon to manufacture and use in the United States and to sell for use in foreign countries, hydraulic devices and means and applicators for enlarging the inner periphery of elastic protectors for the purpose of placing the same upon members of larger diameter, whether said members be drill pipe or transfer sleeves, and also to employ for the same purpose any and all methods claimed in said applications or contained in patents to be issued thereon except that any license granted in this agreement to Ballagh shall not include the right to use a follower or pusher rubber behind the protector to be applied.

V.

Bettis grants to Ballagh under said applications of Bettis and any patents issued thereon a personal non-exclusive license to manufacture and use in the United States and to sell for use in foreign countries transfer sleeves as disclosed in any of the hereinabove identified applications which embody mechanical, as distinguished from hydraulic means, for removing the protectors from such sleeves to drill pipe or the like, and Bettis agrees not to use

(Testimony of J. C. Ballagh.)

any such transfer sleeves as licensed in this paragraph except as otherwise herein provided.

VI.

Ballagh grants to Bettis under said applications of Ballagh and any patents issued thereon a personal nonexclusive license to manufacture and use in the United States and to sell for use in foreign countries transfer sleeves as disclosed in any of the hereinabove identified applications which embody hydraulic, as distinguished from mechanical means, for removing the protectors from such sleeves to drill pipe or the like, and Ballagh agrees not to use any such transfer sleeves as licensed in this paragraph except as otherwise herein provided.

VII.

That any and all patents acquired by the Parties hereto covering any improvements on the devices or methods of said applications shall be within and covered by the licenses granted herein.

VIII.

That the parties hereto shall have the right and license, by written request to employ the mechanical and hydraulic means reserved to the other party in Paragraph V and VI hereof upon the payment of a royalty of Twenty-five Cents (25c) for each and every protector installed by said mechanical or hydraulic means in effecting the removal of an elastic protector to a drill pipe and the like

(Testimony of J. C. Ballagh.)

from a transfer sleeve; that any party exercising said right and license in this paragraph granted shall keep a true and accurate account of the number of protectors sold under the provisions of this paragraph and to whom sold and shall submit a statement in writing by the 25th of each month covering the number of protectors so installed during the preceding month's operations, together with a check in payment for said royalties; and the other party shall have the right, upon reasonable notice, at reasonable times to examine the books of the other for the purpose of ascertaining the accuracy of said statement. The right of examination, however, shall not extend to other books or records than those specifically covering the installations and sale of protectors as in this paragraph provided.

IX.

That the licenses granted herein shall be non-assignable by either party except that they shall be transferable to the successor in interest of the business of either party.

X.

That the party who is the owner of any patent issued upon said applications shall have the right to determine what suits for infringement thereof may be instituted or conducted and shall bear the cost thereof, including fees of attorneys engaged by it, provided, however, that the other party shall have the right to be represented by counsel where

(Testimony of J. C. Ballagh.)

said counsel is paid by said other party; it being the intention of the parties hereto that they shall cooperate in connection with any infringement actions which may be brought in order to establish the validity and infringement of any patents in issue.

XI.

This agreement shall continue in force and effect until the expiration of the last patent to be granted upon the applications specified herein, unless otherwise mutually terminated by the parties or as hereafter provided for.

XII.

This agreement may be cancelled by a notice in writing for any material breach hereof unless the other party, within thirty (30) days thereafter, cures said default.

XIII.

Bettis shall have the right to purchase and Ballagh agrees to sell to Bettis, at cost, mechanical applicators covered by United States Patent No. 1,965,876 for use abroad but not for use in the United States. This right is personal to the parties hereto.

(Testimony of J. C. Ballagh.)

In Witness Whereof, the parties hereto have affixed their hands and seals the date first above written.

BETTIS RUBBER CO., Ltd.

By B. H. BARNES

President

PATTERSON-BALLAGH
CORPORATION

By J. C. BALLAGH

Sec-treas

[Endorsed]: Filed July 3, 1942.

Q. By Mr. Bednar: Have you conducted tests in the field to determine whether or not the method used by the Bettis Rubber Company for releasing the protector from the sleeve onto the drill pipe is faster or slower than your mechanical method?

A. Yes, sir, I have.

Q. What have been the results of those tests?

A. We have been considerably faster in our installation.

Q. What is the importance of that?

A. That means that the crew making the installation is freed from staying on the job so long, first, and in the second place, if some of the crew are helping make the installation, it frees them. In cases where there are a large number of protectors, three or four or sometimes five hundred, the difference of just a matter of a few seconds to each

(Testimony of J. C. Ballagh.)

protector may make a difference whether a man has to stay all night on the job or come back the next day, if he can install them all in a few hours time and the men can finish them.

Q. Without a hydraulic applicator of the form your [212] company now has, can you estimate what would happen to your sales of protectors?

A. I think they would be very materially less, very much less, except for export.

Q. Why is that?

A. We have never sold the hydraulic machine outside of the United States yet. These protectors installed outside of the United States don't use the hydraulic method. That would affect our sales only in the United States. It would very materially affect our sales in the states, very materially.

Q. Before you had your hydraulic applicator, did you lose customers by reason of the fact that somebody else had a similar device?

A. Yes, sir; we lost a great percentage of our business.

Q. Who had the other device at that time?

A. The Bettis Rubber Company. They had a hydraulic applicator. They didn't use a transfer sleeve at that time. They installed it direct on the rig. But with the hydraulic method it is much faster.

Q. You were using a manual applicator when Bettis came out with the hydraulic applicator?

A. Yes.

Q. But without the sleeve?

(Testimony of J. C. Ballagh.)

A. Without the sleeve. We developed the sleeve, which was a big advance over their system. We were able to [213] make installations on the rig, away from the rig. We have made installations hundreds of miles away from the rig itself.

Q. What is the importance of that?

A. The importance of that is that there is no well time lost at all. And we can go in the yards where the pipe is stacked, and we will have days of time to make installations, days to pick out just the joints of pipe on which they want the installation to be made, and we can come there at our pleasure and make the installation. And it also allows the protector to be put anywhere along a full length of a drill pipe. Many companies like to put the protector in the middle of the joint. Some like to have it five feet from the end, and some people like to have it within a foot of the end, and we are able to put it where they wish.

Q. When you speak of a tool joint, do you mean a whole length of drill pipe?

A. No. I mean the joint that is on the end of the full length of drill pipe, just the connection between one length of drill pipe and the next.

Q. I refer you to Defendants' Exhibit B, and ask you whether or not you have portrayed on that exhibit the effect of the hydraulic applicator on the application of these protectors to the drill pipe?

A. Yes, sir.

Q. What does that indicate?

(Testimony of J. C. Ballagh.)

A. It indicates that in 1939 approximately 7 percent of [214] all protectors that we sold were installed by the hydraulic method. In 1940 it was 36½ percent, and in 1941 it was 47 percent.

Q. Do you have any customers who, after having used the hydraulic method, have reverted to the other method? A. Yes, sir.

Q. In what states?

A. In California we have had the Union Oil Company and the Associated Oil Company and the Shell Company.

Q. I believe you misunderstood my question. Have you ever had a customer which, after having used the hydraulic method for placing these protectors on the drill pipe, has thereafter gone back to the old manual method?

A. Never in the history of our business.

Q. Under what circumstances is the old manual applicator still used?

A. The old manual method is used in export and in locations in the Mid-Continent, where they cannot be reached readily. There are locations where they are drilling on barges out in the Gulf, and up in North Dakota and Michigan and Mississippi, where it doesn't pay us to send over a man with a hydraulic machine, and we therefore are able to send them a few protectors with the old style expander, and he uses it and makes the installation, and then returns the tool to us.

Q. When your company sells protectors does that include [215] the service?

(Testimony of J. C. Ballagh.)

A. We sell every protector installed, except those sold for export.

Q. After your company started using hydraulic applicators, did they obtain new customers on that account? A. Yes, sir.

Q. What customers are those?

A. Many customers in the Mid-Continent, and, more specifically, in California, the Associated Oil Company, the Shell Company, the Union Oil Company, the Barnsdall Company, Richfield, Belridge Oil Company, The Texas Company.

Q. Is this device for sale? A. Yes, sir.

Q. To the public? A. Yes, sir.

Q. Have any of them ever been sold?

A. No; we never have.

Q. Is there any other competition in respect to this device other than the device used by the Bettis Rubber Company?

A. The Grisly Manufacturing Company have a hydraulic applicator. There is one being used in Oklahoma.

The Court: I think we will suspend here until 10:00 o'clock Monday morning.

(An adjournment was taken until Monday, July 6, 1942, at 10:00 o'clock a.m.) [216-17]

Los Angeles, California,
Monday, July 6, 1942. 10:00 A. M.

(Present as before.)

The Court: You may proceed.

Mr. Bednar: Mr. Ballagh.

J. C. BALLAGH

(Recalled)

Direct Examination

(Resumed)

By Mr. Bednar:

Q. Mr. Ballagh, has there ever been any contract between you and Patterson-Ballagh Corporation requiring you to spend your time inventing?

A. No, sir.

Q. Has there ever been any such contract as to Mr. Miller? A. No, sir.

Q. Has there ever been any contract between you and Patterson-Ballagh Corporation requiring you to assign any of your inventive rights or patents to the corporation? A. No, sir.

Q. Has there ever been any such contract as to Mr. Miller? A. No, sir.

Q. In what countries of the world has your corporation sold its products?

A. In Canada, Mexico, Cuba, and the Dominican Republic. [218] Trinidad, Venazuela, Colombia, Peru, Brazil, Argentine, Australia, New Zealand, Borneo, Dutch East Indies, Japan, Burma, China, Persia, Turkey, Egypt, Roumania, Iraq and Iran, Austria, Germany, England, Russia, the Belgian Congo, Alaska, in the United States; I think in Italy, Persia—I think I have named that. I think that is approximately the list.

Q. Mr. Ballagh, I refer you to Plaintiff's Exhibits 5-A, -B and C, which are the Pennington audits. Were copies of those audits sent to Mr. Dulin

(Testimony of J. C. Ballagh.)

within a short time after they were published by Mr. Pennington?

A. Yes, sir; they were, very shortly thereafter.

Q. In other words, Plaintiff's Exhibit 5-A, for the year 1939, is dated by Mr. Pennington March 29, 1940, and within a short time thereafter a copy was sent to Mr. Dulin?

A. Yes, sir.

Q. And the same is true of the other audits?

A. Yes, sir.

Mr. Bednar: At this time I would like to read into the record a short portion of the minutes of the annual meeting in January of 1942.

Mr. Lamont: What is the materiality of that?

Mr. Bednar: You are complaining of certain actions taken in 1941, and this has to do with the ratification thereof, at the end of the year.

Mr. Lamont: All right. [219]

Mr. Bednar: Do you want to check my reading here?

Mr. Lamont: I would like to check it afterwards.

Mr. Bednar: It appears from the minute book that all shareholders were present in person or by proxy, including Mr. Dulin.

“Ratification of prior acts of officer and directors.

“The suggestion was made that the meeting consider the matter of the adoption of a resolution ratifying and approving the action of the Board of Directors and the acts of the officers of the company, since the last annual meeting of the shareholders. E. S. Dulin stated that he opposed the

(Testimony of J. C. Ballagh.)

adoption of such a resolution for the reason that the officers and directors had taken action and performed acts during the period not consistent with the best interests of all the shareholder and that the Board of Directors had taken action during the period in respect to the fixing of salaries and the payment of additional compensation after a consideration of interim statements which, in his opinion, did not correctly reflect the condition of the corporation in so far as its actual earnings and condition were concerned.

“Thereupon, on motion of H. C. Armington, seconded by Howard Burrell and carried, E. S. Dulin voting in the negative, it was

“Resolved, that all action taken by the Board of Directors of this Corporation since the last annual meeting of the shareholders thereof, whether said directors were de [220] facto or de jure, and all acts of the officers of this corporation done pursuant to the authorization of the Board of Directors or with the knowledge and acquiescence of the Directors are hereby ratified, approved and confirmed as and for the corporate acts of this corporation.”

Q. By Mr. Bednar: Mr. Ballagh, when did you begin a course of developing inventions and new devices of your own? A. About 1938.

Q. And what was the device that you started out on?

A. The hydraulic applicator.

Mr. Lamont: The what?

(Testimony of J. C. Ballagh.)

A. The hydraulic applicator.

Q. By Mr. Bednar: Prior to 1938 the patents and inventions and new devices used by your corporation were developed by somebody other than yourself?

A. Yes, sir.

Q. I believe in the last testimony on Friday you were just concluding on the hydraulic applicator, and I am going to ask one more question on it. How much saving of time is there in the use of the hydraulic applicator over the manual applicator, time and expense?

A. In the drilling of extremely deep wells, in which our protectors are sold, and in which the majority are sold, there is a saving to the operator of direct time of from 35 to 40 hours during the installation of the protector, and there is an additional saving of at least that much time, [221] generally somewhat more, in the time that is otherwise lost in going back into the hole and re-drilling and getting back to bottom. And then when they are back on bottom they have to circulate for a much longer period of time to get the mud back into condition, if they have been out of the hole for any length of time. For each hour that they are out of the hole, they probably spend 30 minutes of circulating mud, that is, in the deep wells, where the big majority of our protectors are sold.

Q. Can you estimate the saving per hour, for example, to the operator?

A. The big rigs that drill these deep wells, the

(Testimony of J. C. Ballagh.)

time runs from 120 to 125 feet an hour. They call that the well time, and there is probably 40 hours direct time, and at least 40 hours indirect time, and maybe 50 to 60 hours indirect time, a total of maybe 100 hours altogether during the drilling of the well.

Q. Have you assigned your two applications in reference to the hydraulic applicator to the corporation? A. Yes, sir.

Q. Passing onto the lip protector, you, I believe, testified that you were the inventor of that?

A. Yes, sir.

Q. And an application has been filed for patent?

A. Yes, sir.

Q. Has there been a conveyance to the corporation of [222] any rights that you may have in that?

A. Yes; I assigned all my right and title to it.

Q. What is the function and purpose of the lip on this protector?

A. The lip protector is to prevent the swirling of the mud that occurs above the protector in the old style. There is a little ledge above the protector, where the protector extends outward from the drill pipe, and there is a swirling effect, due to the velocity of the mud. The mud has sand in it that causes a swirling, and that acts on the drill pipe, and there takes place an action that is known as cavitation, cavitation and a sandblasting effect, very probably a combination of both of them, in which part of the metal is removed, and that leaves a groove just above the protector, and that groove gets deeper and deeper, and as soon as it gets seri-

(Testimony of J. C. Ballagh.)

ous, then the drill pipe has to be laid aside; otherwise it will break; and in many cases, where they don't notice that, the drill pipe would break, causing a very serious fishing job.

Q. Are you acquainted with any fishing jobs that cost a substantial sum, on account of the pipe grooving under the use of the old protector?

A. I wasn't on the jobs where they had the fishing, but our salesmen have told us of a number of instances where jobs have cost several thousand dollars.

Q. What has been the effect of the lip protector on the [223] slipping of the protector up and down the pipe?

A. The lip protector has approximately 15 percent greater area in contact with the pipe, and the resistance to slipping depends directly in proportion to the area that is in contact with the pipe. The longer the protector the less the tendency to slide.

Q. What has been the experience of the company as between the two types of protectors, in respect to the matter of tearing and ripping the protector in applying it to the pipe?

A. The loss due to torn protectors is almost zero at the present time. We had losses of two or three percent in the days before we used the lip protector, and the reason for that was that when the tearing takes place in the old style protector the tear starts in the body of the protector, and it continues on down, and gradually gets bigger and

(Testimony of J. J. Ballagh.)

bigger, as the protector is under a heavy stretch. In the lip protector the tear starts on the lip, and when it reaches the body of the protector itself it will stop. The body of the protector becomes thicker, and when the tear reaches the body it stops. So the lip may be torn, but the protector is not damaged.

Q. Has your company, after engaging in the sale of these lip protectors, ever had a complaint that the pipe was grooving?

A. We have never had a complaint since that time, and [224] our salesmen tell us that the lip protector has entirely cured that situation ever since we started using the lip protector. In fact, of our many customers that we now have, they won't accept the old style protector. We have had many cases in which they sent them back to the plant, and many of them gave us an order and they specified on the order that they must have lips.

Q. Have you ever had any customers who have used the lip protectors who requested the old protectors? A. We never have.

Q. Can you estimate the average cost of labor and material going into a lip protector?

A. It would be the same as making a standard protector.

Q. Approximately what is that?

A. Well, it would depend entirely on the size. We make different sizes, and each one, of course, has a different weight and time.

(Testimony of J. C. Ballagh.)

Q. Are you in a position to estimate the average cost of labor and material on that?

A. The average weight of all protectors I would say is about eight pounds to the protector, and we estimate a labor and material cost of about \$2.50 for the labor and material, so that it does not make any difference to us whether it is lipped or unlipped, as far as our manufacturing cost is concerned, with the exception that when we would change over from the standard protector to the lip protector, we would [225] have to make additional molds for the design.

Q. Do you still sell the old type protector?

A. Yes; we still have them, if they want them.

Q. What is the average retail price on a protector?

A. About \$8.00; \$8.00 or \$8.50 would be the average of all sizes.

Q. What sort of competition do you have in the sale of lip protectors? Is there any competing device?

A. We have none. As far as I know, there is no competing device on the market.

Q. Except the old rubber style protector?

A. Yes,—no competition with the lip protector.

Q. Your company is the only company putting out the lip protector? A. Yes, sir.

Q. Can you describe the prospects in respect to the lip protector?

Mr. Lamont: That is asking for the opinion and

(Testimony of J. C. Ballagh.)

conclusion of the witness, if the Court please, and I object to it.

The Court: I don't know. What do you have reference to?

Mr. Bednar: The future. In some of these devices the future is not so good.

The Court: These are all made of rubber, and I don't think the future looks so good for any of them.

Mr. Bednar: Probably not, except that they have a year and a half's supply. [226]

The Court: Well, then it would look good for a year, probably.

Q. By Mr. Bednar: I now refer you to Defendants' Exhibit A, and ask you whether or not the area shown, referring to the lip protector, correctly reflects the gross sales in respect to them.

A. Yes, sir, in 1941.

Q. And in 1940?

A. 1940, 70 percent lip protectors.

Q. And there were none sold in 1939?

A. No. There was a few sold. Our first experiments were made in 1939, and customers paid for those.

Q. Now passing onto the drill pipe wiper, I understand that the previous time you were on the stand you testified that that was your invention, and that patent has been obtained and assigned to the corporation, and I believe the patent is in evidence? A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. What is the approximate manufacturing cost of the average pipe wiper?

A. I think our average of all sizes made last year was about \$5.75, labor and material.

Q. What is the average retail price?

A. \$31.00 average.

Q. Will you describe briefly the object and purpose of the pipe wiper? [227]

A. In the drilling of an oil well the drill pipe is rotated vertically, and at the bottom of the well is a bit and mud is circulated to carry away the cuttings. This mud is a very thick and very heavy mud, and in many cases very expensive. When the drill pipe is pulled or withdrawn from the well, the mud adheres to it, and in ordinary practice they use a stream of water to wash the mud from the drill pipe back into the hole. But adding this extra water means that there is a dilution of the mud, and in order to operate efficiently mud weighting material must be added to the mud, so as to bring it back up to the standard required consistency. Also there is considerable time used in the mixing of this mud and getting it back into the well, so that as the pipe is withdrawn there is added extra water, and there is added mud weighting material, which means added material, both material and water, that is used. In the wintertime this water that is added or the mud that is left on the pipe, freezes, and it is very disagreeable in the areas where there are freezing conditions.

(Testimony of J. C. Ballagh.)

Q. After the dilution of the mud weight material with water, if more mud weight material isn't added, what happens?

A. The mud is then thinned, and there would be a blowout. There have been a number of blowouts where the balance between the pressure of the bottom of the well and the weight of the mud is destroyed by the dilution of water, and those blowouts are extremely dangerous and very, very costly. Some of them [228] have cost hundreds of thousands of dollars and destroyed the entire well. Then there is an added danger in working around a well which is open, and tools are frequently dropped down the hole and fall in the bottom, and occasionally very expensive fishing jobs are necessary. With the advent of the drill pipe wiper the use of water for washing is abandoned. They add extra mud or extra water, and the operations at the rig are much safer, and with the pipe wiper covering the hole, the tools that might otherwise drop down the hole are no longer a danger to the well. There is also the factor of the inspection of the pipe. The pipe is wiped clean, and any slight leak can be found, and can be found before it can be a danger to the well.

Q. In other words, holes and abrasions on the pipe can be discovered before the pipe is put back into the well?

A. Yes. In the pulling of casing from wells and the pulling of drill pipe, the oil would cover the tubing or the drill pipe, and this oil covers the

(Testimony of J. C. Ballagh.)

whole rig and makes it dangerous for the men to work around there. It is very slippery and it slows up the operation, and there is a very grave fire hazard. If oil spreads all over the floor from the drill pipe, it picks up any extra dirt there is on the ground, when they lay the drill pipe or the tubing down, and makes a very difficult job. It makes a very great saving in operations where they are pulling tubing that is covered with oil, especially with thick, viscous oil. [229]

Q. How do your protectors that are on the drill pipe get through the pipe wiper?

A. The pipe wiper has a thin web, and the protectors go right through it.

Q. The inner part of it is more resilient than the outer part?

A. Yes; it will stretch, and the protectors go right on through it.

Q. Is there any competition in this field?

A. Very little. There was one company that started the manufacture of wipers, and, as far as I know, they have abandoned the manufacture. I haven't seen any for close to a year. As far as I know, there is no competition.

Q. Can you estimate the approximate percentage of your devices in the field, your pipe wipers, in the field, as against pipe wipers put out by other people?

A. I would say it is at least 99 percent.

Q. Sold by your company?

(Testimony of J. C. Ballagh.)

A. Yes, sir. I don't know of any competing device in service at the present time.

Mr. Bednar: At this time I would like to offer in evidence a picture of the pipe wiper, without the printing that is on there.

The Clerk: Defendants' Exhibit M.

Q. By Mr. Bednar: Directing your attention, Mr. Ballagh, to Defendants' Exhibit G, and to figure 3 thereon, [230] does this graph correctly represent the gross sales of pipe wipers in 1939, 1940 and 1941? A. Yes, sir.

Q. And are these figures on the graph cumulative? In other words, let me put it this way: Were the sales in 1931, the gross sales, \$12,296.00?

A. Yes, sir.

Q. And were the gross sales in 1940, \$30,189.50?

A. 30 cents.

Q. \$30,189.30? A. Yes, sir.

Q. And were the gross sales in 1941, \$43,862.20?

A. Yes, sir. They are not cumulative. In other words, those three years would be the adding of those three years together.

Q. In respect to the Kelly Wiper, Mr. Ballagh, is this another device that you manufacture under your pipe wiper patent?

A. This is the larger size pipe wiper. That is a slightly different design than the other pipe wiper. This is a pipe wiper that we designed as a result of a request of the Humble Oil & Refining Company to provide one with windows in which they

(Testimony of J. C. Ballagh.)

could watch their mud level. This is what we call our 19-inch pipe wiper.

Q. That is not the Kelly Wiper?

A. No, sir. [231]

Q. Is that the Kelly Wiper?

A. Yes, sir; that is one of the designs of the Kelly Wiper, and this second device is another style, made in three or four different styles to fit different kellys of different manufacture. They all represent the same principle, that is, being a rubber web that wipes the kelly in the same manner that the drill pipe wiper wipes the drill pipe. The purpose of the Kelly Wiper is to keep the mud from getting into the roller bearings of the kelly.

Q. Will you explain what the kelly is?

A. The kelly is the driving device of an oil well. The drill pipe itself is round, and the rotation is transmitted to the drill pipe by means of a square bar that has an up and down movement, and at the same time can be driven horizontally, and as it moves up and down, of course, the lower part gets into the mud, and it drives through a housing in which are located roller bearings which just fit the square.

Q. Will you refer to that by the page and number of the exhibit?

A. This is the inside cover.

Q. Of Defendants' Exhibit E?

A. The drill pipe fits onto the bottom of this kelly joint. The kelly is the steel housing which operates the kelly portion. The wiper is attached to

(Testimony of J. C. Ballagh.)

the bottom of this housing. Various manufacturers have different designs, [232] so we have made various styles of housing which fit to their design. In this particular design, this steel housing would be just at the lower part of this housing. Another design would be at the bottom, in the same manner; it would be possibly welded in the housing, and later on, when one of the rubbers wear out, they can undo all the bolts or unscrew the bolts, and put in a new rubber or new wearing medium.

Q. When were these Kelly Wipers invented?

A. In 1940.

Q. Who invented them? A. I did.

Q. Has an application been filed?

A. No, not as such. It will be a patent, I think, that will issue subject to the original pipe wiper patent, because it has got the same type of construction, except that it has got a square hole instead of a round hole.

Q. Has there been any assignments of rights in respect of the Kelly Wiper?

A. Yes, sir, along with the pipe wiper.

Q. What is the approximate cost of manufacturing, labor and material, in respect to a Kelly Wiper?

A. \$8.00 for the average of those that were sold last year.

Q. And what is the approximate retail price?

A. The retail price of the assembly was \$23.10.

Q. I will show you Defendants' Exhibit A, and indicate [233] thereon, in 1941, Kelly Wipers,

(Testimony of J. C. Ballagh.)

\$1039.50. Are those the wipers you are referring to?

A. Yes, sir.

Q. And there were none sold in 1940?

A. I don't believe there were any sold at all in 1940.

Q. Are there competing devices in the field?

A. No, none, none that I have ever heard of.

Q. Has all the experimental work on this been done?

A. Yes, sir, I think it has. We made our patterns and had the machine work standardized, and made the jigs, and made the molds.

Q. Has this item been pushed in 1941 by your corporation? A. No; very little.

Q. Why was that?

A. The steel used in it is almost impossible to get under the rating that has been assigned to the oil industry. They were assigned an A-8 rating in the oil industry, or except in certain cases, and we can't buy steel under an A-8 rating at the present time.

Q. Now turning your attention to this plastic tubing protector, are there any other examples of this device in court except this one?

A. Yes; there are two others.

Q. Will you explain the nature and purpose and function of this device? [234]

A. After an oil well starts dropping off in production from its initial flow, the well is then started operating by a pump, and most of the pumps made are sucker-rod pumps that operate inside of tubing,

(Testimony of J. C. Ballagh.)

and in the pumping wells there is a pulsation reaction of the tubing against the weight of the fluid. Each time the sucker rod and the pump moves upward, the pump itself will move slightly downward, due to the extra weight, and that pulsation is up and down, and the collar is in contact with the casing, a very close fit, and as time goes on the collar pulsating up and down against the casing starts to wear the casing so it will split or crack, and it will wear out. That is the effect of the wear, without any device to prevent the wear. It is a very common occurrence in the oil fields.

Q. Who is the inventor of this plastic tubing protector?

A. The first ones were made without any invention. We took a standard piece of plastic and impregnated the canvas, in 1934 or 1935, and we made the device that is shown here. That worked quite satisfactorily, and we sold many of them, but they wouldn't stand up very well; they would wear, and when they would come out of the hole they would have to be replaced, not all of them, but many of them.

Q. When did you begin to sell those?

A. I think in 1935 or 1936, the very first ones. We experimented with them in a small way for a couple of years before we started making any great number, and after this [235] device was going we found this trouble, and then I worked on a new type of material, which I have in this sample, made

(Testimony of J. C. Ballagh.)

in another manner and from other materials and different molding.

Mr. Bednar: This last one I would like to introduce in evidence as an exhibit for identification.

The Clerk: It will be Exhibit N for identification.

Q. By Mr. Bednar: Has there been any application for patent on Exhibit N for identification.

A. No, sir, not yet.

Q. Is it a secret process?

A. It is a secret process at the present time.

Q. When did the sales of Exhibit N commence?

A. I think we made our first sales in 1938. There were very, very few of them.

Q. I mean of this new one, not the old type?

A. I think in 1939 the first sales were made of the——

Q. I show you Defendants' Exhibit G, and refer you to figure 1 appearing thereon. Is that the new style of tubing protector, Defendants' Exhibit N for identification?

A. Yes. We were working on both those designs at that time, both the old and the new, and various other combinations.

Q. And are the figures representing the gross sales on that cumulative, or do they represent each separate year?

A. They are each year by year, the sum total of three years, and a fraction thereof would be added together to form the total for the period. [236]

Q. What is the estimated average cost of one of

(Testimony of J. C. Ballagh.)

these tubing protectors, cost of manufacture, labor and material?

A. Last year the average of all we made was \$3.25.

Q. What is the average retail price?

A. \$6.60.

Q. Is there any competing device in the field?

A. No, not at the present time. Several years ago one firm started making a competing device, but they abandoned manufacture.

Q. Has the performance of Defendants' Exhibit N for identification been a marked improvement over the old tubing protector?

A. Yes, it has. As far as I know, we have never had one of the new devices worn out.

Q. What are some of the qualities of this new plastic material?

A. It prevents the rubbing of the steel against steel in the well, as the well pulsates; it is lighter than the steel, so any cuttings from it will float out with the oil, and by reducing the friction it makes pumping easier, and it makes it easier on the rods, and cuts down the cost of the fishing jobs which are caused by the tubing wearing out and the very expensive job of cementing the holes that are worn in the casing by the collars when those are used.

Q. Is the material oil proof?

A. Yes, it is oil proof. It is also electrically [237] proof. It cuts down the electrical action of the brines that are in the oils, that ordinarily eat the pipe.

(Testimony of J. C. Ballagh.)

Q. Is this the first non-rubber item that your corporation has engaged in selling?

A. Yes, I think it was the very first.

Q. Are experiments now being conducted for the use of that material in other fields?

A. Yes, sir. We are experimenting with its use in aircraft work, and some for marine and other industries.

Q. What has been the reaction of the oil trade to this new departure?

Mr. Lamont: I object on the ground that it asks for a conclusion of the witness.

The Court: Overruled.

A. In oil fields where the pumping is deep enough to have this trouble occur it has been of tremendous help to those operators. Many wells that formerly weren't able to operate because of the excessive cost of operating, have started pumping again, and wells that have had thousands and thousands of dollars of cost of plugging the holes caused by the wearing of collars, and that has been entirely eliminated. In some certain fields, we have got as many as 3000 in one field, and in one field we have them on every pumping well, and in one field in North Louisiana, and one certain field in Mississippi, they are on every well that is being completed. [238]

Q. Is there any method of estimating the saving to the operator of the plastic tubing protector?

A. I don't think I could make any estimate of saving. I know one company in Northern Louisi-

(Testimony of J. C. Ballagh.)

ana, where their superintendent told me that they spent \$30,000 in five wells, having them repaired, before they started using these protectors, and they have used the protectors for more than a year, and he said they had never had a repair job since. What that would figure per barrel I have no way of knowing.

Q. Now, whose invention is this plastic sucker rod protector?

A. There are two different styles of plastic sucker rod protector. One is the box style, and the other is the rod style.

Q. Limit yourself to the box style for the present.

A. The box style is very similar construction to the tubing protector, the same type of ring and the same type of application on the tubing collar with the sucker rod box.

Q. In other words, the material on the sucker rod protector is the same as on Defendants' N for identification?

A. Yes, sir.

Q. Who is the inventor of the box style sucker rod protector?

A. I am.

Q. Has there been an application for a patent?

A. No, sir, not yet. [239]

Q. What is the function and purpose of that? What is a sucker rod?

A. A sucker rod is a rod that is used to actuate the pump at the bottom of a pumping well. The rod is slowly pulled up and down, and the valve at

(Testimony of J. C. Ballagh.)

the bottom of the pump closes on the upstroke and opens up on the downstroke.

Q. Why is it necessary to have a protector?

A. The wells are very seldom straight. They are crooked; and as the rod goes around corners it wears, event the rod itself, or tubing, or both. The plastic protector on the outside of the box contacts the inside of the tubing and acts as a wear medium between the two.

Q. What is the average cost in labor and material of a sucker rod box style?

A. \$1.50 was the average last year.

Q. What is the average retail price?

A. \$5.50.

Q. Now referring you to Defendants' Exhibit G, figure 2, does that correctly portray the volume of gross sales of sucker rod protectors, box style, from 1939 to 1941? A. Yes, sir.

Q. And the yearly figures appearing thereon are not cumulative, but they represent the figures for the particular years in question?

A. Yes, sir. The sum total of those would be the cumulative figures. They are the annual sales.

[240]

Q. Incidentally, if a patent of any kind is issued to you on this new plastic material, is it your intention to assign it to the corporation?

A. Yes, sir.

Q. Are there any competing devices for this box style sucker rod protector?

(Testimony of J. C. Ballagh.)

A. Yes, sir. There are quite a number. There are devices made of wood, devices made of bronze, and lead, and babbitt, and made of steel, of various shapes. It is one of the toughest problems there is in the operation of an oil well, and probably one of the most serious, and many have tried to solve it.

Q. Now passing to Mr. Miller's inventions, I just want to bring this out. Your Honor will recall in the prior testimony that both of these wire line wipers were patented, and have been assigned to the corporation. Will you please tell us very briefly the function and purpose of these wire line wipers, Mr. Ballagh?

A. In drilling an oil well they use a wire line when they pick cores and when they have fishing jobs and have trouble with the bits. It is used when the drill pipe is out of the hole, ordinarily, although there are coring devices for the wire line going down inside of the drill pipe. In the withdrawing of this wire line from the well mud adheres to it. In the drilling of the well mud or oil adheres to it, if the well is on production. As the wires comes out of the [241] well the mud is thrown off or blown off, and it covers and drops on the machinery and drops on the pipe and drops on the men, and if it is oil, it will be a very fine spray of very inflammable fluid, and many fires have been started in rigs by the oil spray, mud or oil getting on the floor and making it difficult for the men to work safely and rapidly. But the problem I have solved is all to the advantage of the operator. It

(Testimony of J. C. Ballagh.)

doesn't save very much in the way of oil or mud; it saves a little bit, but not very much. Its biggest saving is in the safety to the crew and the saving of the machinery, not having mud or oil thrown over the machinery, and in the fire hazard feature.

Q. What is the average cost, labor and material for one of these wire line wipers?

A. The average was \$5.00 last year.

Q. And what was the average retail selling price? A. \$12.10.

Q. Are there competing devices?

A. There are a few devices, but most of those are quite unsatisfactory. This device, I think, is by far the most satisfactory on the market. It is much cheaper to operate, and simpler, and safer.

Q. Have all molding and die casts and development been completed on this? A. Yes, sir.

Q. Could you illustrate just shortly how one of those [242] wire line wipers operates, just very briefly?

A. This is pulled open to wind on the wire. When it is on the wire it grips it with a very heavy grip, just like a winding tower on a rig. And it has got the resilience of the rubber itself. It has no holes through the center, and yet the wire rope goes through the center. The molding is such that it has a very heavy grip, and as the rope goes on through it wipes the mud or oil off beneath. It is very simple. The same principle applies on the other one, except the other one has a replaceable rubber, has

(Testimony of J. C. Ballagh.)

an adjustment, so that the rubber can be tightened up. The rubber on this steel housing—steel lasts much longer, and the refill rubber itself costs less, and it has a spring actuated release. So when the bailer or core barrel comes to the surface it is disengaged automatically.

Q. What is the purpose and function of the steel clad protector?

A. The function of the steel clad protector is to stabilize the drilling in the open hole beneath the casing and to protect the tool joints themselves from wear. In drilling an oil well a certain length of casing is set, and beneath that the bit operates in the open hole, and if the formation is abrasive the tool joints wear very rapidly.

Q. I believe an application for patent has been filed on that? A. Yes, sir. [243]

Q. And some claims have been allowed?

A. Yes, sir.

Q. And has that been assigned by Mr. Miller to the corporation? A. Yes, sir.

Q. What is the average manufacturing cost on the open hole tool joint protector?

A. I think about \$8.00.

Q. What is the average retail price?

A. About \$25.00.

Q. Is there any competing device?

A. Not at the present time.

Q. Are sales of the open hole tool protector being pushed at the present time? A. No, sir.

Q. Why is that?

(Testimony of J. C. Ballagh.)

A. On account of the priority on the steel, steel castings, welding rods and pipe, all of which are almost impossible to get on the priority that has been assigned to the oil industry.

The Court: We will take a few minutes recess at this time.

(Short recess)

Q. By Mr. Bednar: Mr. Ballagh, about how many protectors has your company sold in its history?

A. Somewhere between 750,000 and 900,000.

[244]

Q. I believe you testified the other day that of all the protectors in use in the world approximately 75 percent were being sold by your company?

A. Yes, sir; that is my best estimate.

Q. Approximately, and on the average, how many protectors did your company sell each year, 1939, 1940, and 1941?

A. About 30,000 per year.

Q. Referring you to Defendants' Exhibit B, does this chart indicate that in 1939 approximately 20 percent of all protectors sold in California were put on by the hydraulic applicator?

A. About 20 percent of those sold by Patterson-Ballagh.

Q. And that is in California? A. Yes, sir.

Q. And is it also correct, according to this chart, that in the Mid-Continent area, in 1939, approximately 25 percent of all protectors sold by you in that area were put on by the hydraulic applicator?

(Testimony of J. C. Ballagh.)

A. Yes, sir.

Q. And in 1940 are the percentages indicated on the chart correct? A. Yes, sir.

Q. In other words, of the California volume of protectors sold by your company in 1940, 75 per cent were put on by hydraulic applicators?

A. Yes, sir. [245]

Q. And in the Mid-Continent area 25 percent were put on by the—— A. Yes, sir.

Q. And in 1941, is it correct that in California 95 percent of all protectors sold by you were put on by the hydraulic applicators? A. Yes, sir.

Q. And 35 percent in the Mid-Continent area?

A. Yes, sir.

Q. That is the hydraulic applicator of defendant? A. Yes, sir.

Q. Which is the subject of your agreement with the Bettis Rubber Company?

A. Yes, sir; the cross agreement.

Q. You have never paid any royalty to the Bettis Rubber Company under that agreement?

A. No, sir.

Q. And the hydraulic applicator, plus the transfer sleeve that you use—the hydraulic applicator, that is royalty free under the Bettis Rubber Company agreement? A. Yes, sir.

Q. What has been the reaction of the trade, if you know, to the steel clad tool joint protector of Mr. Miller?

A. It has been very favorable in areas where the formation is abrasive.

(Testimony of J. C. Ballagh.)

Q. Can you give us an example of such area?

[246]

A. Castiac, California, and several fields in Wyoming, and several fields in Arkansas, and Northern Louisiana and West Texas.

Q. I note here Defendants' Exhibit A, steel clad protectors \$597.29. When you refer to these areas, are you referring to areas where these protectors have been sold since 1939 or prior?

A. In a number of these areas we haven't sold them. We put them out on trial for the customers, and we wouldn't bill them. In many of the cases it was for our own information. We would bill the steel clads up in Castiac, and sometimes in Avenal, California.

Q. Referring to Mr. Miller's sucker rod protector, rod style, will you explain the purpose and function of that, and wherein it differs from the box style?

A. In the box style protector, the box is fitted on the end of the rod, and the box and the rod together move up and down, and the plastic protector contacts the inside of the tubing, and there is a direct wearing action between the two against the inside of the tubing. In the box style protector, the protector is molded directly onto the rod, and the protector will lay against the side of the tubing, and the rod will move down inside the protector, and it forms a smooth bearing between the tubing and the rod, so that the oil lubricates it, so that any wear that takes place is against the plastic, which is fairly soft, and

(Testimony of J. C. Ballagh.)

against the [247] smooth rod itself, whereas with the box style the friction is against the rough tubing.

Q. Is the rod style protector slowly replacing the box style protector?

A. In my opinion, it will eventually entirely replace it, where there are difficult pumping conditions.

Q. Has an application for patent been filed by Mr. Miller on the rod style?

A. Yes.

Q. And that was just recently, was it not?

A. Yes, sir.

Q. What is the approximate cost of labor and material of the rod style sucker rod protector?

A. I haven't got the—I think it is approximately \$2.00, cost of labor and material.

Q. What is the average retail price?

A. I think it is about \$6.50. I would like to check that, if you want it exactly, but I think that it is approximately what the selling price is.

Q. Is there any competition on the rod style sucker rod protector other than the box style?

A. As far as I know, there is no design like that. There are many wearing devices used on sucker rods, but none of them have the inside wearing surface; they are all outside wearing surfaces.

Q. Is the sale of the rod style protector being pushed [248] at the present time?

A. It is being pushed in connection with the manufacture of the rods themselves. We haven't been able to buy many of the rods, but the companies that

(Testimony of J. C. Ballagh.)

make the sucker rods themselves have been working with us, and we have been selling to them.

Q. What has been the reaction of the trade to the rod style sucker rod?

A. It has been very favorable, extremely so. I think its future is very, very bright.

Q. Now, who invented the sucker rod wiper?

A. Mr. Miller.

Q. Will you explain the nature and function of the sucker rod wiper, and how it works?

A. A sucker rod wiper is a steel housing, in which there are two rubber discs, and the rubber discs wipe the sucker rod that goes through in the same manner that the pipe is wiped in the pipe wiper. There is a floating rubber disc with a hole in the center through which the sucker rods are thrust, and as the sucker rods are pulled from the well the oil is wiped from the rods. At the top is a safety device so that when the rods drop they will be automatically caught, and not fall back into the well.

Mr. Bednar: I offer in evidence a picture of the sucker rod wiper of Mr. Miller.

The Clerk: Defendants' Exhibit O. [249]

Q. By Mr. Bednar: Do you know whether there has been an application for patent filed on this yet?

A. I don't think it has got beyond the affidavit stage. It may have been filed. I am not positive about it.

Q. What is the cost of material and labor in the manufacture of that device?

A. \$16.10.

(Testimony of J. C. Ballagh.)

Q. And what is the average retail price?

A. \$48.00.

Q. Are there any competing devices?

A. Yes, there are a number.

Q. What has been the reaction of the trade to this device?

A. It has been very favorable. It overcomes several of the objections. I think, however, the market is somewhat limited, as it does not wipe under pressure. There are hundreds of thousands of wells that have no pressure, so it has quite a wide market, but is not in universal use.

Q. Are the sales of that device being pushed at the present time? A. No.

Q. That is on account of steel priorities?

A. On account of steel priorities.

Q. Have your molds been made, etc.?

A. Yes, the molds and all the patterns have been made, and the jigs necessary. [250]

Mr. Bednar: That is all.

Cross Examination

By Mr. Lamont:

Q. Mr. Ballagh, of course you are familiar with the three raises in salary that you were given during the years of 1939 and 1940, are you not?

A. Yes, sir.

Q. Mr. Miller voted in favor of all those raises, did he not?

A. I believe so, except those for himself.

Q. And you voted in favor of those for him, did you not? A. Yes, sir.

(Testimony of J. C. Ballagh.)

Q. During this period did Mr. Armington ever vote contrary at any meeting to you or Mr. Miller?

A. I don't believe so. The minutes will speak for themselves.

Q. But you don't recall that he ever did?

A. No.

Q. You have spoken several times during your testimony of non-protector items? A. Yes, sir.

Q. Included in that term were items, were there not, upon which you paid royalties to other people?

A. Yes, sir.

Q. Will you, referring to this chart, just state what [251] those items were and the amount of royalties that you paid?

A. In 1939—

Q. In 1939—take that.

A. In 1939 we paid \$750.12 on the wire line guide.

Q. What were your gross sales on that item?

A. They were \$33,522.18. That, however, included the refill rubbers, on which we pay no royalty, and it includes the steel parts, steel wire and steel castings used in connection therewith, and on which we pay no royalty. We pay royalty only on the refill rubbers themselves used in the initial devices sold.

Q. Would there be any possibility of breaking down that item? A. Yes.

Q. As to gross sales?

A. We pay a 10 percent royalty, which would mean on the devices under which royalty was paid, \$7501.20.

(Testimony of J. C. Ballagh.)

Q. Will you take the same item and give your testimony as to 1940?

A. In 1940 the wire line guide royalty was \$458.82. The gross sale of the guides and refills, the metal parts in connection therewith, was \$32,694.98.

Q. How much of that item was royalty paid on?

A. On \$4588.20.

Q. Will you state the same facts as to 1941?

A. The royalty was \$412.38, with gross sales of [252] \$34,996.84. The sales of the items covered by the royalty were \$4,123.80.

Q. What is the next item, and state how much you paid in royalty, and in 1939 what were the gross sales?

A. The gross sales were \$11,633.33. The royalty paid was \$1,770.22.

Q. Give the same information as to 1940.

A. The gross sales were \$7797.61. The royalty was \$858.77.

Q. Take the next item upon which you paid royalty.

A. Do you want 1941 for that payment?

Q. Yes.

A. 1941 was \$6,111.43, with a royalty of \$665.32.

Q. Now will you give us the next item upon which you paid royalty?

A. The next item is mud guns.

Q. What was the gross for 1939, the gross sales?

A. The gross sales were \$574.87 on one device on which we paid a royalty, and \$5983.51, upon which we

(Testimony of J. C. Ballagh.)

paid no royalty. And the royalty was \$45.99 on the \$574.87 amount.

Q. Will you give the same information as to 1940?

A. In 1940 the sales on which we paid royalties were \$2853.25, on which we paid a royalty of \$228.26.

Q. What was the next? How about 1941?

A. In 1941 we have a gross sale of \$5287.95, and there was no royalty. [253]

Q. Now, what is the next item upon which you paid royalty?

A. In 1940 there was a sucker rod wiper, the sales of which were \$389.50, on which we paid a royalty of \$38.95. In 1941 the sucker rod wiper sales were \$384.30, on which a royalty of \$38.42 was paid.

Q. Any other items?

A. As far as I know, that is the total.

Q. I believe you testified that prior to the formation of the partnership with Mr. Miller you were employed by the Pomona Pump Company?

A. I had no partnership with Mr. Miller.

Q. I don't mean with Mr. Miller. I mean with Mr. Patterson.

A. Yes, sir.

Q. How much were you paid by that organization?

A. I was on a commission basis. I think I grossed about \$700 or \$800 a month.

Q. And after that you were employed by the Johnston Pump Company, were you not?

A. You said at Pomona?

Q. Yes.

(Testimony of J. C. Ballagh.)

A. With Pomona, I think I was making about \$500 a month with the Pomona.

Q. And with the Johnston about \$800?

A. I think that was about between \$700 and \$800.

[254]

Q. Mr. Ballagh, I want to ask you whether, at the time of the taking of your deposition in this matter, which was on June 23, 1942, you did not testify as follows, page 52:

“Q. Can you give an estimate, even though a rough estimate, as to the percentage of profits accruing from the sale of protectors and stabilizers?

“A. Not with any degree of exactness, because we kept no basis of cost on the individual commodities. We had practically the same method of calculating our costs, and all the items we sold had approximately the same mark-up, and any gross margin was applicable to gross profits. Against the gross profits will accrue the overhead and sales and other expenses, so we end up the year with some sort of a net profit; but how that net profit would be per item, I could not say. Is that close enough for what you want?

Q. Would it have any relation to the percentage of gross sales of the different articles?

“A. Yes, I would say very materially.

“Q. In other words, it would trot along pretty well with the percentage of gross sales?

“A. Fairly so, except that during certain periods we may have excessive amounts of costs that would be thrown into the expense, in the way of die costs

(Testimony of J. C. Ballagh.)

and patterns and amortization of experiments that we might be making.

“Q. But other than that, generally speaking they would go hand in hand; is that correct? [255]

“A. Well, I don't believe I could make any rule that would give it. I would say, as we increased our sale of casing protectors, our profit would very probably go up to the percentage of sales accruing to casing protectors.”

You testified in the manner that I have read, did you not?

A. Yes, substantially that way.

Q. Before you perfected your hydraulic applicator there were other hydraulic applicators on the market, were there not?

A. Yes, but not with a transfer sleeve.

Q. But other than that, there were such applicators?

A. Yes, but not with the transfer sleeves.

Q. But this applicator was developed by you, was it not, to handle that particular thing?

A. Yes, sir.

Q. Was there a pipe wiper on the market before you put yours on?

A. Not that I ever heard of.

Q. Haven't you received a notice of infringement from the Shell Oil Company in regard to that?

A. Yes, sir.

Q. And the question as to the infringement remains at this time undetermined?

(Testimony of J. C. Ballagh.)

A. That notice was received prior to the issuance of our patent, I think about a year. [256]

Q. But there has been no determination?

A. As far as I know, nothing was done about it.

Mr. Lamont: If the Court please, I have some more questions of this witness, but I think it will speed things up very decidedly if we could have a recess now until 2:00 o'clock.

The Court: Very well.

Mr. Lamont: I will have my matter in shape, and I think we can make time.

The Court: Very well. We will suspend until 2:00 o'clock.

(A recess was taken until 2:00 p. m. of this same day.)

Afternoon Session—2:00 o'Clock.

Mr. Lamont: If agreeable to the Court, I would like to put on two witnesses out of order, so that they may leave.

The Court: Very well.

Mr. Lamont: Mr. Grant, will you take the stand?

JOHN M. GRANT,

called as a witness on behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: Will you state your full name?

The Witness: John M. Grant.

(Testimony of John M. Grant.)

Direct Examination

By Mr. Lamont:

Q. Mr. Grant, where do you reside?

A. South Pasadena, 1221 Marengo Avenue.

Q. What is your occupation?

A. Purchasing agent.

Q. For what company?

A. Bell and Loffland, Inc.

Q. How long have you been such?

A. I have been with this company eight years.

Q. What is the nature of that company's business?

A. Oil well drilling contractors.

Q. How do they compare in size with other companies? [258]

A. They, with their associate company, Loffland Brothers, I believe are the largest firm of oil well drilling contractors in the world.

Q. Have you had any occasion to purchase protectors of different types? A. Yes.

Q. What types of protectors have you purchased?

A. Well, I have probably purchased from time to time practically every type that has been made.

Q. Among those protectors, you have purchased protectors from Patterson-Ballagh, have you?

A. Yes, sir.

Q. Looking at these two protectors, Mr. Grant, are you familiar with both of those types of Patterson-Ballagh protectors?

A. In a general way, yes.

(Testimony of John M. Grant.)

Q. One, I believe, is the protector without lips, and the other is the protector with lips?

A. That is right.

Q. That is true, is it not?

A. Yes, sir.

Q. Your company has had occasion to use those protectors, has it, of that type?

A. Yes, at times.

Q. Apparently the one with lips is very similar to the other form of protector, except that it has been streamlined, [259] has it?

Mr. Bednar: We object to that, if your Honor please.

The Court: I think so.

Q. By Mr. Lamont: Your company has used those types? A. Yes, sir.

Q. To what extent is there an advantage in having lips on a protector over the other type?

Mr. Bednar: May I ask a question on voir dire, your Honor?

The Court: Yes.

Q. By Mr. Bednar: Mr. Grant, have you ever seen these in operation in the field?

A. I have seen them on pipe. You can't see them in operation. They are down in the well.

Q. When they have been out of the hole, have you seen them?

A. Yes, sir.

Mr. Lamont: Now will you read my question, please?

(Question read by the reporter.)

(Testimony of John M. Grant.)

A. I don't know that there is any.

Q. By Mr. Lamont: Does it make it stick any firmer to the drill pipe or not?

A. Well, in my opinion it does not.

Q. As a matter of fact, the firmness with which it adheres to the drill pipe depends upon the length of the protector, does it not?

A. I would say so.

Q. And a protector without lips, of the same length, would have the same clinging power, would it not?

A. The only addition of the lipping arrangement that you could possibly work up here would be the length of these lips and that shouldn't amount to an awful lot in the overall length and tensile strength in the balance of the protector.

Q. According to the testimony heretofore given in this case, sometimes a protector would cause a groove on the drill pipe. Are you familiar with that?

A. I have heard that discussed, yes, and I have probably seen one or two cases of it.

Q. Is that ever of any serious consequence?

A. I would say not. In comparison to the general wear and tear on drill pipe, it is not a particular item.

Q. Occasionally these protectors have been known to slip. Are you familiar with that?

A. Well, I believe they do, yes.

Q. Is that of any serious consequence when it occurs?

A. No, not to the operator.

(Testimony of John M. Grant.)

Q. Do you know what a hydraulic applicator is?

A. Yes, sir.

Q. With what variety of such an applicator have you been familiar?

A. I have seen the one used by the Bettis people, and I have seen the one used by E. M. Smith. I have not only [261] seen them, but I have seen them in operation.

Q. As far as you know, what hydraulic applicator was first on the market?

A. The first one I knew of was the one Bettis had.

Q. Do you know the first use of that patented device?

A. I couldn't say the first use, except that I know that when I first saw it it was on a pipe on a well we were drilling for an oil company in the Cole's Levee district.

Q. Referring to this Bettis' applicator, with what speed is it possible to install a protector?

A. Well, the applicator and the two men which are furnished to work the machine and install the rubbers on the pipe, they were fast enough that it didn't keep the others waiting like they were waiting for the crew at times.

Q. Have you ever had any conversations with Mr. Ballagh as to the Patterson-Ballagh applicator?

A. No, sir, I don't believe I have.

Q. Are you familiar with pipe wipers?

A. I have seen those in operation.

(Testimony of John M. Grant.)

Q. What makes?

A. I have seen both the Bettis and the Ballagh.

Q. In your opinion, did the Bettis pipe wiper have any superiority—or did the Ballagh pipe wiper have any superiority over the Bettis wiper?

A. No, sir.

Q. Which one of those two did you see first?

[262]

A. Now, that I wouldn't be able to say for sure, but I will say that, as far as I can remember, the first person that I met out of the Los Angeles office was for the Bettis Pipe Wiper. It may have been that in some emergency sometime in the field, that this pipe had been ordered previous to that, but I don't recall.

Q. Where are protectors usually placed on the drill pipe?

A. As far as we are concerned, we like to have them as close under the tool joint box as possible, and not so close that they will interfere with the elevators.

Q. What make of protector has your company been in the habit of buying?

A. We have been using the Bettis for several years.

Q. Have you had any trouble with protectors slipping?

A. Not recently. Years ago we used to have trouble with protectors slipping on the pipe, but nothing in the last several years.

Q. What was the cause of the slipping?

(Testimony of John M. Grant.)

A. Well, there may have been two or three things that caused it. One was, I believe, that they didn't make the protectors long enough for the job they were supposed to do, and I think the quality of the rubber material had considerable to do with it.

Mr. Lamont: That is all then. [263]

Cross Examination

By Mr. Bednar:

Q. Mr. Grant, have you ever used a lip protector? A. Yes, sir.

Q. Where has your company done most of its drilling?

A. I believe we have drilled in every field in California, with possibly one or two exceptions.

Q. Have you done much, if any, drilling in the last three years outside of California?

A. We never drill out of the State.

Q. Then your opinion on the lip protector is based on your experience in California?

A. Yes, sir.

Q. Have you used the lip protector in any quantity? A. No great quantity, no.

Q. Have you used enough of them to know what percentage of the two types of protectors tear on being applied to the drill pipe, which one tears easiest in applying them to the drill pipe?

A. No, I wouldn't know anything about that, because we are not concerned with that.

Q. I just wondered if you had observed it. I

(Testimony of John M. Grant.)

realize the manufacturer pays for the torn protectors.

A. I have seen quite a few protectors put on pipe, and I never saw one tear; I will put it that way — probably a coupe of thousand or maybe three thousand. [264]

Q. This hydraulic applicator that you mentioned seeing, which seemed to put the protectors on fast enough, where was it in operation?

A. It was on a well in the Cole's Levee field.

Q. Was it in the derrick, or where?

A. The applicator was on the ground. The device itself was right by the derrick.

Q. Was there a transfer sleeve being used?

A. Yes, sir.

Q. Have you ever witnessed any tests as to which hydraulic applicator is the fastest? A. No.

Q. This time when you testified that you saw the hydraulic applicator working right alongside the well, were the rings installed up in the derrick?

A. Yes; yes, they were installed as the pipe was going in the hole.

Q. In other words, they weren't being installed on the pipe away from the derrick?

A. No, not in that case.

Q. What experience have you had in drilling in the Mid-Continent, if any?

A. The company I am with doesn't drill there, as I said. I have been in the Mid-Continent. I have never worked for an oil company in the Mid-Continent, but I worked for a supply company there. [265]

(Testimony of John M. Grant.)

Q. Do you know whether they have more trouble with ringing the pipe in the Mid-Continent than they have in California?

A. What do you mean "ringing the pipe"?

Q. By reason of the protectors rotating on the pipe and wearing it away?

A. I wouldn't know about that. I haven't ever seen any data on it, and I don't know of any such trouble that they may have had.

Mr. Bednar: That is all.

Mr. Lamont: That is all. Mr. Wiese. [266]

WALTER H. WIESE,

called as a witness in behalf of plaintiff, being first duly sworn, testified as follows:

The Clerk: State your full name.

The Witness: Walter H. Wiese.

Direct Examination

By Mr. Lamont:

Q. Mr. Wiese, where do you reside?

A. San Marino.

Q. What is your occupation?

A. Secretary and treasurer of Byron Jackson Company.

Q. As a part of your duties, do you have supervision of the accounts of that company?

A. I do.

Q. Will you turn to the account of that com-

(Testimony of Walter H. Wiese.)

pany showing the investment of Byron Jackson in Patterson-Ballagh, and will you state to the Court what that account shows?

Mr. Bednar: Just a minute. Can I ask one question. Mr. Wiese, aren't your accounts based on what certain items cost you?

A. They are based upon the facts as recorded.

Q. For instance, does it show the Hopkins patent down there? A. The Hopkins patent?

Q. Yes. [267]

A. Well, is your question the cost of the Hopkins patent? Is that what you want to determine? Is that what you are asking me?

Q. I am asking you this. You are trying to get at the investment of Byron Jackson in the defendant?

Mr. Lamont: Yes.

Mr. Bednar: And the record so far shows that \$25,000 was paid for 250 shares of stock.

Mr. Lamont: And I want to show, in addition, that \$75,000 was expended by the Byron Jackson Company, as to which an exclusive license was given to Patterson-Ballagh.

Mr. Bednar: I don't believe the cost of the Hopkins patent at all concerns us.

The Court: It probably wouldn't, if you hadn't tried to show the amount of investment of the company.

Mr. Lamont: That is the point. I want to forestall an argument based on that \$25,000 which you put in evidence.

(Testimony of Walter H. Wiese.)

Mr. Bednar: I will put it in providing you put in a copy of the Hopkins patent and show what it is.

Mr. Lamont: Have you got a copy of the Hopkins patent? I have no objection to that.

Mr. Bednar: In other words, as I see it, we are bordering on the question of whether or not these four agreements are one or not one, and determining the amount of the investment.

Mr. Lamont: They argued that a considerable length [268] in the other case, the question of the amount of investment. I will offer this Hopkins patent in evidence.

The Clerk: Plaintiff's Exhibit 20.

Q. By Mr. Lamont: Now, Mr. Wiese, what do the books of the company show as to the amount of investment in Patterson-Ballagh?

A. The account here shows payment on September 20, 1928, of \$12,500.00 to C. L. Patterson and \$12,500 to J. C. Ballagh, and an additional cost of \$75,000 for the Hopkins patent.

Mr. Lamont: That is all. Take the witness.

Cross Examination

By Mr. Bednar:

Q. Was the cost of the Hopkins patent ever communicated to Patterson-Ballagh, do you know? Was it taken into consideration by Patterson-Ballagh, if you know?

A. That is a matter of their records, isn't it?

Q. Were you with the company in 1928?

A. Not in 1928, no.

Mr. Bednar: That is all.

Mr. Lamont: That is all. [269]

J. C. BALLAGH, recalled

Cross Examination, resumed

Mr. Bednar: I might bring to the Court's attention at this time that the license of the Hopkins patent has to do only with the rubber part, a pipe with a groove in it, and——

The Court: I am not interested in that, am I? You introduced a table showing an investment of \$25,000.00, and a return on that investment of several hundred thousand dollars.

Mr. Bednar: I am showing that they retained the metal parts, but we never did get the patent on the metal parts.

Mr. Lamont: You got it, and then licensed it back.

Mr. Bednar: No.

Mr. Lamont: That is what the contracts show that are in evidence.

Mr. Bednar: You had the right to——

The Court: I think I should have sustained an objection to that statement in the first place, showing that investment.

Mr. Lamont: I probably should have made it, but it came in as a part of an exhibit.

The Court: Yes.

Mr. Lamont: I agree with the Court. I don't think there is any materiality at all in the question of the amount of investment here.

Q. By Mr. Lamont: Mr. Ballagh, the inventions of Mr. [270] Miller, as to the amount of gross sales, are represented, are they not, by these yellow——

(Testimony of J. C. Ballagh.)

A. Yes, sir, yes, sir.

Q. I don't know what you would call them.

A. Areas.

Q. Areas on this exhibit. I now refer to Exhibit

A. That is correct, is it not? A. Yes, sir.

Q. In other words, they are very inconsiderable in amount as to the total of those sales during those years?

A. They amount to about \$6000, and I don't consider that inconsiderable.

Q. \$6000 out of \$366,000—that is correct, is it not? A. That is correct, yes, sir.

Q. Now coming to the pipe wipers, what do they represent out of the total gross sales?

A. In 1941 they were \$43,862.60.

Q. Out of a gross of over \$366,000?

A. Yes, sir.

Q. How about 1940?

A. They were \$30,189.50.

Q. Out of a gross of \$329,000?

A. Yes, sir.

Q. And how about 1939? A. \$12,296.00.

Q. Out of a gross of over \$336,000; that is correct, [271] isn't it? A. That is correct.

Q. Looking at your tubing protectors, in 1939 what do they they represent? A. \$3294.00.

Q. Out of a gross of over \$336,000?

A. That is correct.

Q. How about 1940? A. \$8527.20.

Q. Out of a gross of over \$329,000?

A. That is correct.

(Testimony of J. C. Ballagh.)

Q. How about 1941? A. \$16,691.40.

Q. Out of a gross of over \$366,000?

A. That is correct.

Q. And the other patented articles of your invention and Mr. Miller's invention were even smaller in amount of sales? A. Yes, sir.

Q. Your manufacturing plant is still in Los Angeles, is it not? A. Yes, sir.

Q. How large a plant is it, the dimensions of it?

A. We cover about a third of a block, in which the plant is located, part of it one floor and part two floors. Across the street we have approximately one-third of that [272] block, on which is located our warehouse.

Q. Blocks vary in area. Can you give us some idea in feet?

A. I don't remember the square feet. I can get it from Mr. Miller, if you would like to get it. I think he remembers what it is.

Mr. Bednar: I will supply the square footage.

Mr. Lamont: Can we get it now?

× Mr. Bednar: Yes. According to Mr. Miller, of the factory, one floor is 120x125 feet, and the second floor is 120x60, and the warehouse is 240x30.

Q. By Mr. Lamont: The dimensions he has given me include everything, do they not?

A. They include warehouse and office and everything else in that locality.

Mr. Bednar: That is right.

Q. By Mr. Lamont: How many employees did

(Testimony of J. C. Ballagh.)

you have at this plant you have just referred to during the years 1939, 1940 and 1941?

Mr. Bednar: That has already been gone into before.

Mr. Lamont: It was gone into in the depositions, not as to this particular plant; it was all told, over all. A. About 25, I think.

Q. That includes everybody, stenographers and everybody else, does it? A. Just about. [273]

Q. Now, your establishment in Texas, at Houston— A. Yes, sir.

Q. That is a demonstration and assembly establishment, is it not?

A. Partly that. It is our headquarters for our Mid-Continent operation.

Q. Do you do any manufacturing there?

A. We service our installation tools and essemble our mud guns, assemble some of the swivel bumpers, and assemble various devices, and any alterations to be made that can be made without any machine work. We install our tubing protectors there, and we have a hydraulic press and a drill press. We have electric drills and grinders, and do what repair work is necessary.

Q. Strictly speaking, there is no manufacturing there, is there? A. Not as such, no.

Q. Your other offices, do they amount to any more than sales offices?

A. At New Iberia, Louisiana, we have our own little buildings, in which we have our sales and warehouse combined.

(Testimony of J. C. Ballagh.)

Q. How many employees there?

A. Two, sometimes three.

Q. How about Houston, how many employees?

A. In Houston we generally have four that work directly out of Houston. [274]

Q. Now as to the other offices, what do they amount to?

A. They are service stations, where we keep our installation tools and hydraulic equipment, and where we keep our branch stock.

Q. How many of those are there?

A. We have one at Victoria, Texas, one in Shreveport, Louisiana, one at Ventura, and one at Avenal, one at Casper, and one at Turner Valley, Canada, and we have service, but without hydraulic machines, in Odessa, West Texas, and at Fairfield, Illinois and Oklahoma City; and I think I omitted Bakersfield.

Q. Is that all? A. As well as Los Angeles.

Q. Have you another location in Los Angeles?

A. Yes. We service out of the factory for the Southern California area.

Q. And is that any different location than the factory location?

A. No; it is at the factory.

Q. Now, as to other offices, how many employees do you employ all told, in all of them together?

A. Our total employees directly on our payroll run, I think—I think during 1941 they were about 43, I think they were, an average. They have run during that period from 35, I think, up to 43.

Q. Mr. Ballagh, in 1938 the minutes show that

(Testimony of J. C. Ballagh.)

you have at this plant you have just referred to during the years 1939, 1940 and 1941?

Mr. Bednar: That has already been gone into before.

Mr. Lamont: It was gone into in the depositions, not as to this particular plant; it was all told, over all. A. About 25, I think.

Q. That includes everybody, stenographers and everybody else, does it? A. Just about. [273]

Q. Now, your establishment in Texas, at Houston— A. Yes, sir.

Q. That is a demonstration and assembly establishment, is it not?

A. Partly that. It is our headquarters for our Mid-Continent operation.

Q. Do you do any manufacturing there?

A. We service our installation tools and essemble our mud guns, assemble some of the swivel bumpers, and assemble various devices, and any alterations to be made that can be made without any machine work. We install our tubing protectors there, and we have a hydraulic press and a drill press. We have electric drills and grinders, and do what repair work is necessary.

Q. Strictly speaking, there is no manufacturing there, is there? A. Not as such, no.

Q. Your other offices, do they amount to any more than sales offices?

A. At New Iberia, Louisiana, we have our own little buildings, in which we have our sales and warehouse combined.

(Testimony of J. C. Ballagh.)

Q. How many employees there?

A. Two, sometimes three.

Q. How about Houston, how many employees?

A. In Houston we generally have four that work directly out of Houston. [274]

Q. Now as to the other offices, what do they amount to?

A. They are service stations, where we keep our installation tools and hydraulic equipment, and where we keep our branch stock.

Q. How many of those are there?

A. We have one at Victoria, Texas, one in Shreveport, Louisiana, one at Ventura, and one at Avenal, one at Casper, and one at Turner Valley, Canada, and we have service, but without hydraulic machines, in Odessa, West Texas, and at Fairfield, Illinois and Oklahoma City; and I think I omitted Bakersfield.

Q. Is that all? A. As well as Los Angeles.

Q. Have you another location in Los Angeles?

A. Yes. We service out of the factory for the Southern California area.

Q. And is that any different location than the factory location?

A. No; it is at the factory.

Q. Now, as to other offices, how many employees do you employ all told, in all of them together?

A. Our total employees directly on our payroll run, I think—I think during 1941 they were about 43, I think they were, an average. They have run during that period from 35, I think, up to 43.

Q. Mr. Ballagh, in 1938 the minutes show that

(Testimony of J. C. Ballagh.)

your [275] salary, in October, 1938, was increased; that is correct, is it not?

A. I can't remember. If the minutes show it, it is a fact.

Q. Your salary was increased in 1938, you recall that, don't you? A. I can't recall 1938.

Mr. Lamont: That is a fact, isn't it?

Mr. Bednar: Yes.

Q. By Mr. Lamont: What I want to ask you is this: That was with the understanding, was it not, that if the profits didn't bear up, your compensation would be decreased?

A. I don't remember that.

Q. As a matter of fact, your salary later on was decreased, wasn't it, from \$1500 to \$1000; that is correct, isn't it?

A. If the minutes show it, if the record show it, it is a fact.

Q. Since Mr. Miller came into the business have there ever been and decreases in salaries?

A. No, not that I know of.

Q. Before Mr. Miller came into the business, and while Mr. Patterson was there, at least, he was going into inventions and matters of that type, was he not? A. Mr. Patterson?

Q. Yes. In other words, your company——

[276]

A. I knew of none that he went into for the corporation.

Q. Wasn't your company dealing with such things at that time?

(Testimony of J. C. Ballagh.)

A. Outsiders—we had at that time the license on our wire line guide and on our swivel bumper and our mud gun.

Q. Didn't your company make some investigation into matters of that type?

A. We have made investigation at various times.

Q. And you did while Mr. Patterson was with the company?

A. Yes, sir.

Q. And reports were made to the Board of Directors with regard to those matters, were they not?

A. I think they were.

Q. Since Mr. Miller came into the business, has there ever been any report made to the Board of Directors as to any inventions or examinations of inventions of other people, or anything of that kind?

A. I don't remember a directors meeting that we had at which we didn't tell Mr. Dulin and explain various devices we were working on. I can't recall any specific conversation.

Q. Can you recall that you ever did at any meeting of the directors?

A. Yes, I can recall that we have.

Mr. Lamont: Mr. Bednar, you will stipulate that the minutes don't show any such report? [277]

Mr. Bednar: I am not sure whether they do or not, Mr. Lamont.

Mr. Lamont: It is very clear in referring to the A-66 minutes that the reports were there made apparently as to experimental work connected with the business.

(Testimony of J. C. Ballagh.)

The Witness: While Mr. Patterson was with the business?

Q. By Mr. Lamont: Have you or Mr. Miller, during this period of 1939, 1940 and 1941, ever effected any improvements or inventions which you have obtained which have not been assigned to the company? A. None of mine.

Q. How about his?

A. I don't know of any of his that have not been.

Q. Are you making both types of protectors at the present time? A. Yes, sir.

Q. Do the two protectors vary in price?

A. No; they are identical.

Q. Coming to pipe wipers, you gave some testimony as to the percentage of total business of pipe wipers done by Patterson-Ballagh. How many wells were equipped with pipe wipers during the years 1939, 1940 and 1941?

A. I can't tell the number of wells, because in some cases there would be three or four on one well, and in other cases they would last for ten or twelve wells. I have no [278] way of knowing how many wells we have equipped.

Q. Or the percentage of wells equipped with your pipe wipers?

A. No. I will say that the majority of deep wells and wells of any size drilled by major oil companies were buying supplies—major drilling contractors, had the pipe wipers on.

(Testimony of J. C. Ballagh.)

Q. The majority of them had yours, you mean?

A. The majority of them, yes, sir.

Q. How many pipe wipers did you sell in those years, that is, the dollar value, but not the number?

A. They averaged \$31 during that period, and you can divide one by the other, and it will give you the approximate number.

Q. What percentage of wells were equipped with wire line guides of your manufacture?

A. In what area, and during what year?

Q. Well, for all oil wells during the years 1939, 1940 and 1941.

A. We didn't manufacture them, I don't think, during the year 1939. I think they were just started in 1940, and then were sold in 1941.

Q. 1940 and 1941?

A. I would say, taking all wells as a whole, just a very few percent. A great number of wells never used any wire rope at all in the well. [279]

Q. You said that you were having difficulty in securing steel to manufacture certain products?

A. Yes, sir.

Q. How long has that condition existed?

A. Oh, it has been getting constantly more acute for the past year. Our biggest trouble in the last year has been getting the little accessories that go with it. For instance, welding rods it has been almost impossible to get without a rating higher than we have, and without welding rods we couldn't do very much fabrication.

(Testimony of J. C. Ballagh.)

Q. In making these inventions it was necessary to have certain materials, was it?

A. Yes, sir.

Q. Who paid for those materials—you or Mr. Miller or the company?

A. The Company.

Q. You testified that you were manufacturing bakelite. That was a secret process?

A. Yes, sir.

Q. Who was the first one to start working on the secret process—you or Mr. Miller or Mr. Patterson?

A. Mr. Miller. Mr. Patterson worked some on the process. Mr. Patterson hasn't made any of this new composition at all.

Q. Also in your testimony you stated your retail prices on these different gadgets of your invention and Mr. Miller's [280] invention?

A. Yes, sir.

Q. Let me ask you, what was the extent of the discount on those retail prices? What did you actually net on those?

A. The prices I gave you were the prices the customer paid. We had a 2 percent cash discount, and if he bought them direct he paid that price, less the 2 percent cash discount. If he bought them through a supply store the supply store had a 10 percent discount. And if he bought them through one of our agents who sold the supply store, and then was given some service, we sold our agents generally at about a 25 percent discount. But the

(Testimony of J. C. Ballagh.)

price the customer paid was what is shown on our discount sheet, less 2 percent for cash.

Q. Out of that retail figure would also come overhead, would it not, and also sales expense?

A. That was the gross dollars that we received at the factory, and from it was paid all of our costs.

Q. Who was the first inventor of hydraulic applicators, do you know?

A. I think a man by the name of Minor.

Q. Didn't you at one time concede priority of invention to Bettis?

A. No. There was an interference, at which certain of his claims interfered with certain claims of ours, and we may a cross license, under which he took those that had to [281] do with our device, and we took those that had to do with his.

Q. You received from Bettis, apparently, a license?

A. Yes, sir. We had a cross license. We licensed them and they licensed us.

Q. Have any claims ever been allowed on your application for patent covering your lip protector?

A. No, sir, not yet.

Q. Referring to your plastic tubing protector and the plastic sucker rod protector, what percentage of wells employ protectors?

A. Of all wells?

Q. Yes.

A. That is pretty hard to say. There are about

(Testimony of J. C. Ballagh.)

800,000 or 900,000 wells in the United States, and I think we have probably got them on possibly a thousand wells.

Q. In other words, the percentage, in any event, is very small, the total?

A. Yes, sir; they are used only in areas where there is extreme deep pumping, and where this pulsation occurs that occurs in certain fields in certain areas. In the shallow wells that trouble does not take place.

Q. There is a very limited market for that sort of thing?

A. I would estimate that there is probably another hundred thousand wells that they could be applied to, and probably there are new wells being put on production constant- [282] ly enough to insure probably a constant, steady market.

Mr. Lamont: I think that is all.

Redirect Examination

By Mr. Bednar:

Q. Mr. Ballagh, Patterson-Ballagh Corporation doesn't pay any royalties at all to yourself or Mr. Miller for anything you have invented during the time mentioned in this trial? A. No, sir.

Q. How long ago did you get this notice of infringement from the Shell Oil Company?

A. I think it was about a year before the patent issued.

Q. Following that notice did your patent attorneys write the Shell Oil Company a letter?

(Testimony of J. C. Ballagh.)

A. Yes. They explained the construction of our device.

Q. Have you heard from the Shell Oil Company since then?

A. As far as I know, Shell has never answered that letter.

Q. From your experience in the field, does the hazard of ringing the drill pipe by reason of the old style protector occur more frequently in California or in the Mid-Continent?

A. It is very uncommon in California. I have only [283] seen two instances since I have been in business in California, and it was of minor consequence. It was almost entirely in the Mid-Continent area, due to the difference in the mud velocity; they carry very much higher mud velocities, and the drilling is different. They are drilling through softer formations, and they require higher pressures, and much faster drilling.

Mr. Bednar: That is all.

Mr. Lamont: That will be all. Mr. Chesnut, will you take the stand? [284]

JOHN CHESNUT,

a witness heretofore duly sworn, upon being recalled, testified as follows:

Direct Examination

By Mr. Lamont:

Q. Mr. Chesnut, where do you reside?

(Testimony of John Chesnut.)

A. La Canada, California.

Q. And you are connected with Byron Jackson, are you not? A. Yes, sir.

Q. How long have you been connected with that company? A. About twelve years.

Q. In what capacity?

A. As manager of the patent and new development department.

Q. What has been your experience along those lines? A. With the Byron Jackson Company?

Q. Yes.

A. It is my duty to watch all of the patents that issue each week from the Patent Office, of which there are 700 to 1000 a week, and to interview inventors and promoters who think they have something which might be of interest to the Byron Jackson Company; to make an analysis of those patents which seem to be in our line of business, to determine whether the patent covers anything of material value, whether it might stand up in litigation, and to determine questions of validity and infringement, and then to go into the cost of manufacture of the product, and the question of whether they can be manufactured in our plant; to make a survey of the market, the probable price that can be obtained, and to determine, finally, whether or not a profit can be made on the item; and to determine whether it can be sold through our existing sales facilities or would require some extension of those facilities.

Q. Had you ever had any experience in patents and inventions before coming to Byron Jackson?

(Testimony of John Chesnut.)

A. Yes, sir.

Q. Where, and how much?

A. I was with the Standard Oil Company of California from 1920 to 1930, and during the first five years I was in the engineering department of the Standard Oil Company in San Francisco, that is, the general engineering department. The last five years I was assistant manager of their Patent Department.

Q. What university did you graduate from?

A. I didn't graduate. I attended the University of California for two years.

Q. You have heard the testimony in this case, have you not? A. Yes, sir.

Q. And you have heard described the different inven- [286] tions that Mr. Ballagh and Mr. Miller have claimed to have made? A. Yes, sir.

Q. As to how many of those claimed inventions are *their* competitive devices?

Mr. Bednar: May I ask a question on voir dire?

Mr. Lamont: Yes.

Q. By Mr. Bednar: In all this investigation, Mr. Chesnut, did you investigate anything other than field devices that you use in your own business?

A. Yes; I investigated the products made by any company with which we are affiliated or in which we have any financial interests. I have made it a practice to watch the rubber items that could be sold in the oil fields, because we have a substantial interest in the Patterson-Ballagh Corporation.

Q. Do you know anything about the amount of

(Testimony of John Chesnut.)

competition with respect to these items you are going to testify to? A. In a general way.

Mr. Lamont: Now, will you read my last question, Mr. Reporter?

(Question read.)

A. I believe all of them, except possibly one or two, in which there has been a very, very limited sale. I refer to the steel clad protector and the plastic sucker rod protector and tubing protector.

[287]

Q. Referring to the same inventions, are any of those claimed inventions of an extraordinary nature?

Mr. Bednar: Just a minute. May I have that question read?

(Question read by the reporter)

Mr. Bednar: I object to that as calling for a conclusion of the witness.

Mr. Lamont: My purpose in going into this is to show that they are simply, you might say, run of the mill inventions with respect to anything of this type of any similar company.

Mr. Bednar: I don't think it is important whether they are patentable.

Mr. Lamont: I am asking him about the inventions.

Mr. Bednar: That is very uncertain.

The Court: You are asking now whether they are extraordinary. I don't know about that.

Q. By Mr. Lamont: What is the nature of these inventions as a whole, we will say?

Mr. Bednar: I think that is generalizing. If

(Testimony of John Chesnut.)

you are going to talk about competing items, why not limit yourself to one item.

Mr. Lamont: I am talking about these inventions that are being claimed.

Mr. Bednar: I object to it as calling for a conclusion and opinion of this witness.

The Court: I don't know about that word "extraordinary." What might be extraordinary to one man wouldn't be to another.

Mr. Lamont: I rephrased my question.

The Court: I didn't hear that. What is it now?

Mr. Lamont: Please read the last question.

(Question read by the reporter.)

The Court: All right. You may answer.

A. As a preface to the answer to that question, I might say that in connection with my qualifications I failed to state that I am a registered patent attorney and that I am quite familiar with the values of patents as such. And, looking at these inventions from the standpoint of a patent which could be enforced to protect a valuable monopoly, and also looking at possible markets for the invention—

Mr. Bednar: I don't want to interrupt, but I don't think the man is qualified to testify.

The Court: I don't know. He was asked a question and he hasn't answered it. Read the question.

(Question read by the reporter.)

Mr. Bednar: I object to the question.

The Court: He may answer the question.

(Testimony of John Chesnut.)

A. I would say that they are well described by the term "run of the mill inventions." They relate to minor improvements, and probably useful improvements in inventions or in devices made by a specialty manufacturer, which includes rubber products in the oil industry, and in any [289] business we expect the manufacturer will improve his products from time to time and find other items which fit into his line, and I would say they are just average inventions, if they are inventions.

Q. By Mr. Lamont: Now referring to this invention of the lip protector, have you ever heard of a patent on that particular—

A. No, sir.

Q. Is it patentable?

A. Not in my opinion.

Mr. Bednar: Objected to as calling for a conclusion of the witness.

Mr. Lamont: He is an expert along that line. He is a registered patent attorney and experienced in that line.

The Court: In patent cases they can testify to anything, and this really is a patent case. This was patented?

Mr. Lamont: An application was filed. A patent was not issued.

The Court: That is right. He may answer.

A. In my opinion, it is not patentable at all, or, if any claim should be allowed by the Patent Office, it would be of a very limited nature. I base that

(Testimony of John Chesnut.)

opinion upon a study of prior patents, for instance, a patent to a man by the name of Berryman.

Q. By Mr. Lamont: Let me ask you whether this is [290] the Berryman patent that I now hand you.

A. Yes, sir.

Q. Will you continue with your answer?

A. Berryman patent No. 1,913,018, issued June 6, 1933, shows a casing protector having a streamlined lip at either end. It differs from the Patterson-Ballagh protector mainly in that this is of the so called split protector type, instead of being a solid ring like the Patterson-Ballagh protector, but in so far as a lip protector is concerned, it is immaterial whether the protector is split or solid, and in my opinion the lip of the Berryman patent would be sufficient to prevent the issuance of another patent upon the Patterson-Ballagh protector based solely upon the streamlining of that lip and the elimination of eddy currents which might groove the pipe. The second advantage, or alleged advantage, of the Patterson-Ballagh lip protector is that it sticks to the pipe better, but in my opinion that is due solely to the length of the protector, and the Patterson-Ballagh lip protector is longer by the length of the lip, and therefore has just that much better grip on the pipe. That would also be true of this Berryman protector, and I don't see anything that you could base patentability on on the length of the lip. The third advantage, as to whether or not the lip prevents splitting of the protector, that, I think, is a question of degree,

(Testimony of John Chesnut.)

a question of the relative length of that lip. We have a [291] prior patent, I believe to a man named Bettis.

Mr. Lamont: Yes. Before we proceed with this patent, I desire to place this Berryman patent in evidence.

The Clerk: Plaintiff's Exhibit 21.

Q. By Mr. Lamont: Now I hand you another patent, and ask you whether that is the patent you referred to.

A. Yes, sir. This is Bettis patent No. 2,166,937, issued July 25, 1939. It shows a solid ring protector, in which there is what might be termed a lip 8 at each end of the protector, and in my opinion this lip 8 would serve the same purpose as the lip on the Patterson-Ballagh protector, to the extent that its length is equal to or approaches that of the Patterson-Ballagh protector. In my opinion, I don't believe patentability of the lip of the Patterson-Ballagh protector—I should say that I don't believe that the lip on the Patterson-Ballagh protector is patentable over the lip shown in this Bettis patent.

Q. There is one other patent?

A. There is one other patent which has a bearing on this question, and that is the patent to Smith, which shows a streamlined protector. It doesn't have a lip in the sense of having any abrupt change in the thickness of the protector, but it does show a protector which is generally streamlined from one

(Testimony of John Chesnut.)

end to the other, to reduce the eddy currents to a minimum.

Mr. Lamont: I will offer this Bettis patent in evidence. [292]

Q. By Mr. Lamont: I now show you another patent and ask you whether that is the Smith patent.

The Clerk: The Bettis patent will be Plaintiff's Exhibit 22.

A. Yes, sir. This is Smith patent No. 2,197,531, issued April 16, 1940, and shows a streamlined protector.

Mr. Lamont: I will offer this patent in evidence.

The Clerk: That will be Plaintiff's Exhibit 23.

Q. By Mr. Lamont: With regard to pipe wipers, what was the first patent in time having to do with pipe wipers? A. The Penfield patent.

Q. The Ballagh patent, apparently the application was filed after that time, was it?

A. Yes, sir.

Q. Now let me ask you this. Are the claims of the Ballagh patent broad or basic, in the sense that they would control or monopolize the market?

A. No, sir. They are limited to the specific construction used in the Patterson-Ballagh pipe wiper, and in my opinion would not be infringed, for example, by the Bettis or Penfield device.

Q. Will you state briefly your conclusions as to the sucker rod protector, the open hole protector, and the other items mentioned?

A. Taking the sucker rod protector and tubing protector together, since they are generally used

(Testimony of John Chesnut.)

under the same conditions, [293] I would say that the market for such devices is very limited, generally limited to wells of very great depth, as Mr. Ballagh pointed out, or to very crooked wells such as were drilled many years ago, but which we do not encounter today, or wells that are intentionally drilled at a slant, such as the tide lands they were drilling down at Huntington Beach, California, which are drilled at quite an angle to the vertical, and in those instances there might be occasion to use sucker rod protectors and tubing protectors, but in my opinion the total market as compared to protectors of all types is very small, and there have been many inventors who have worked in that field, and many patents have been taken out showing tubing and rod protectors composed of material other than rubber. There is, for example, the Conrader patent. Do you have the Conrader patent there? I would like to have it.

Q. Yes; I have that here.

A. This is Conrader patent No. 831,143, issued September 18, 1906. It shows a protector mounted upon a tubular sucker rod, and for the purpose of patentability I would say that that protector is the equivalent of either a rod protector or a tubing protector, and it is slideable up and down freely on the rod, as is the rod protector of the Patterson-Ballagh Corporation. This patent doesn't say what the material is that the sleeve is composed of. It could be metal or some other material. There are, however, [294] patents showing bakelite, wood,

(Testimony of John Chesnut.)

bronze, and other materials used for protectors of this general type. The interesting thing about this is that it shows a protector that has a wearing surface both inside and outside, and because of the existence of this Conrader patent I would say that no one today could get another patent on the general idea of such a protector. They might, of course, get a patent on some particular material which could be used, but the value of that patent would depend on how much superior that material would be over any other material suitable for that purpose.

Mr. Lamont: I offer that patent in evidence.

The Clerk: It will be Plaintiff's Exhibit 24.

Q. By Mr. Lamont: The next patent I show is the Ballagh patent, which is on the drill pipe wiper.

A. Yes, sir. Patent No. 2,272,395, issued February 10, 1942, filed May 29, 1939.

Mr. Lamont: I will offer this Ballagh patent in evidence.

The Witness: You referred to the Penfield patent, did you not?

The Clerk: That is already in.

Q. By Mr. Lamont: You referred to the Penfield patent? A. Yes, sir.

Q. Is that the patent you have in mind?

A. Yes; this is the patent, No. 2,215,377, issued September 17, 1940, and filed May 2, 1939, which is about [295] a month prior to the filing date of the Ballagh patent.

(Testimony of John Chesnut.)

Mr. Lamont: I will offer this patent in evidence. The Ballagh patent is apparently not in evidence.

The Clerk: The Penfield patent will be Plaintiff's Exhibit 25.

Mr. Lamont: I next offer the Ballagh patent as Plaintiff's Exhibit 26.

Q. By Mr. Lamont: I just have one more patent, the Woods patent. What bearing has that, if any, on those inventions?

A. Woods patent No. 1,764,769, issued June 17, 1930, shows a drill pipe protector which is, in its principal characteristics, similar to the open hole or steel clad protector on which Mr. Miller has filed a patent application. In the Woods patent there is a metal or steel sleeve surrounding a groove in the tool joint. That steel sleeve is rotatable upon the tool joint, and is held in place by means of a soft metal, in this case bronze, to keep the rotatable sleeve from falling off of the tool joint. In the Miller device, the open hole protector, rubber is used in place of the bronze of this patent, and there is a further difference that the Miller device is intended to be placed upon the drill pipe at some point other than the tool joint. I would say that the general idea of having a rotatable sleeve made of steel to withstand abrasion in an open hole and secured in place by some softer metal or material which will resist wear [296] better than steel, is shown by the Woods patent, and therefore any patent that may issue upon Mr. Miller's steel clad protector would have to be limited to the minor details

(Testimony of John Chesnut.)

of construction by which he is enabled to apply the protector to the drill pipe rather than to the tool joint. Whether or not the trade would prefer to have it in that position is an open question. Generally they want the protector to be at the tool joint, as close to it as you can get it. My main conclusion is that the Miller invention, if patentable, is only patentable to a very limited degree.

Mr. Lamont: I offer this patent in evidence.

The Clerk: Plaintiff's Exhibit 27.

Mr. Lamont: You can take the witness.

The Court: We will have our afternoon recess at this time.

(Short recess.)

Mr. Bednar: No cross examination.

Mr. Lamont: That is all. That is our case. Have you anything further?

Mr. Bednar: Nothing further.

Mr. Lamont: That is the story. I would like to ask now what the Court desires, whether it desires oral argument or briefs, or what.

The Court: Whichever you gentlemen choose.

Mr. Bednar: I prefer just oral argument.

Mr. Lamont: I prefer that, if it can come up at some [297] other time, so that I will have a chance to check up my notes and all that.

The Court: We can probably arrange a day. There isn't anything set tomorrow, is there, Mr. Cross?

Mr. Lamont: Tomorrow would be more than sat-

isfactory to me, because then I wouldn't have to make another trip down here.

The Clerk: Just the sentence, your Honor, in the Jones case, which was heard before you.

The Court: Come in at 10:00 o'clock, then.

Mr. Lamont: May I ask, are we going to have a limited time? In arranging an argument, I like to know how much time the Court expects us to consume.

The Court: How much time do you desire?

Mr. Lamont: I think I can get through in half an hour.

Mr. Bednar: Half an hour is all I want.

Mr. Lamont: We can have a tentative understanding that it will be about a half hour on a side.

The Court: I will leave it up to you gentlemen. Talk as long as you have anything to say.

Mr. Lamont: And don't talk any longer?

The Court: And don't talk any longer.

The Clerk: May the record show that Plaintiff's Exhibits 3 and 18, heretofore missing, have been replaced by duplicate exhibits, with the same numbers?

The Court: Yes. Is that all? [298]

The Clerk: Yes, your Honor.

[Endorsed]: Filed November 16, 1942. [299]

[Endorsed]: No. 10473. United States Circuit Court of Appeals for the Ninth Circuit. Byron Jackson Co., a corporation, Appellant, vs. Patterson-Ballagh Corporation, a corporation, J. C. Ballagh and D. G. Miller, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed June 21, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10473

BYRON JACKSON CO., a corporation,
Plaintiff and Appellant,

vs.

PATTERSON-BALLAGH CORPORATION, a
corporation, J. C. BALLAGH and D. G.
MILLER,

Defendants and Appellees.

CONCISE STATEMENT OF POINTS UPON
WHICH APPELLANT INTENDS TO
RELY ON APPEAL

Pursuant to the provisions of Rule 19(6) of the
Circuit Court of Appeals for the Ninth Circuit,

Byron Jackson Co., a corporation, appellant, hereby files a concise statement of the points upon which it intends to rely on appeal, as follows:

1. The District Court erred in not finding that the persons who were and had been directors of defendant Patterson-Ballagh Corporation since February 15, 1939, (other than the defendant Ballagh, the defendant Miller, and E. S. Dulin) in fact were selected by and were in fact representatives of the said Ballagh and the said Miller upon the said Board.

2. The District Court erred in not finding that the said Ballagh and the said Miller ever since February 15, 1939, dominated, controlled, and directed each and every of the acts and doings of said Patterson-Ballagh Corporation.

3. The District Court erred in finding that since February 15, 1939, the said Ballagh and the said Miller, pursuant to or subject to the instructions, advice, supervision or direction of the Board of Directors of said Patterson-Ballagh Corporation, directed the affairs of said Patterson-Ballagh Corporation or carried on its business.

4. The District Court erred in finding that said Ballagh and said Miller, or either thereof, have discharged their duties as such officers faithfully, efficiently, or conscientiously or loyally or meritoriously as to the payment of salaries and/or remuneration to themselves.

5. The District Court erred in not finding that the said Ballagh and the said Miller at all times since February 15, 1939, fraudulently and unlaw-

fully connived, cooperated, schemed, and conspired in directing the affairs of said Patterson-Ballagh Corporation for their own ends (as distinguished from the well-being of said corporation and the interests of plaintiff as a minority stockholder), and for their own profit.

6. The District Court erred in not finding that the said Ballagh and the said Miller declared and paid to the said Ballagh grossly excessive salaries and compensation for services rendered by the said Ballagh to said Patterson-Ballagh Corporation.

7. The District Court erred in not finding that the salary and compensation paid to the said Ballagh for the calendar year 1939 was grossly excessive in at least the amount of \$3,000.

8. The District Court erred in not finding that the salary and compensation paid to the said Ballagh for the calendar year 1940 was grossly excessive in at least the amount of \$18,166.66.

9. The District Court erred in not finding that the salary and compensation paid to the said Ballagh for that part of the calendar year 1941 up to the time of the commencement of this action was grossly excessive in at least the amount of \$9,000.

10. The District Court erred in not finding that the payment of the salaries to the said Ballagh and for the calendar years 1939, 1940, and 1941 was made as a part of a scheme and conspiracy to defraud, entered into by the said Ballagh and the said Miller.

11. The District Court erred in finding that the services rendered by the said Ballagh to Patterson-Ballagh Corporation from January 1, 1939 to the

time of filing suit on September 10, 1941, were and/or are now and/or will continue to be of very great value to Patterson-Ballagh Corporation.

12. The District Court erred in finding that the services of the said Ballagh were performed loyally, efficiently, carefully or effectively, as to the payment of salaries and/or remuneration to the said Ballagh and/or the said Miller.

13. The District Court erred in finding that the compensation paid to the said Ballagh for the periods set forth in paragraphs 7, 8, and 9 hereof was fair, just, or reasonable at the various times it was authorized or approved or paid.

14. The District Court erred in not finding that, by prior arrangement between the said Ballagh and the said Miller, the said Miller voted in favor of the said Ballagh upon all resolutions concerning the compensation of the said Ballagh.

15. The District Court erred in finding that any resolution concerning the compensation of the said Ballagh was approved in good faith and/or by an independent and/or disinterested majority of the directors present at such meeting.

16. The District Court erred in not finding that the compensation paid to the said Ballagh during the calendar year 1939 was approved and ratified at the annual meeting of the shareholders on January 16, 1940 only over and against the protest and objection of the plaintiff herein.

17. The District Court erred in not finding that the compensation paid to the said Ballagh during the calendar year 1940 was approved and ratified at

the annual meeting of the shareholders on January 21, 1941 only over and against the objection and protest of the plaintiff herein.

18. The District Court erred in not finding that the compensation paid to the said Ballagh from January 1, 1941 to September 10, 1941 was approved and ratified at the annual meeting of the shareholders on January 20, 1942 only over and against the objection and protest of the plaintiff herein.

19. The District Court erred in finding that the resolutions of stockholders, or any thereof, mentioned in paragraphs 16, 17, and 18 hereof, were regularly and/or legally adopted or adopted in good faith and/or without fraud by each and all, or any, of the stockholders voting for the same.

20. The District Court erred in not finding that the payment of the salaries to the said Miller and for the calendar year 1940 and for the calendar year 1941 prior to the time of the commencement of this suit was made as a part of a scheme and conspiracy to defraud, entered into by the said Ballagh and the said Miller.

21. The District Court erred in not finding that the sum of \$19,750 paid to the said Miller for the calendar year 1940 was grossly excessive in at least the sum of \$7750.

22. The District Court erred in not finding that the sum of \$12,000 paid to the said Miller for that part of the calendar year of 1941 prior to the time of the commencement of this action was grossly excessive in at least the sum of \$5,000.

23. The District Court erred in finding that the resolutions adopted by the Board of Directors of Patterson-Ballagh Corporation fixing compensation of the said Miller for services rendered by him to Patterson-Ballagh Corporation were duly, regularly and/or legally adopted by the Board of Directors of said corporation.

24. The District Court erred in finding that the services rendered by the said Miller to the Patterson-Ballagh Corporation from January 1, 1940 to the time of filing this action were and/or now are and/or will continue to be of substantial value to Patterson-Ballagh Corporation.

25. The District Court erred in finding that such services referred to in paragraph 24 hereof were performed loyally, efficiently, carefully, or effectively.

26. The District Court erred in finding that the compensation paid to the said Miller during the periods mentioned in paragraphs 21 and 22 hereof was fair, just, or reasonable as to Patterson-Ballagh Corporation at the various times it was authorized or approved or paid.

27. The District Court erred in not finding that, by prior arrangement between the said Ballagh and the said Miller, the said Ballagh voted in favor of the said Miller upon all resolutions concerning the compensation of the said Miller.

28. The District Court erred in finding that the resolutions, or any thereof, fixing the compensation of the said Miller were approved in good faith or

by an independent or disinterested majority of the directors present at such meetings.

29. The District Court erred in not finding that the compensation paid to the said Miller during the calendar year 1940 was approved and ratified at the annual meeting of the shareholders on January 21, 1941, only over and against the objection and protest of the plaintiff herein.

30. The District Court erred in not finding that the compensation paid to the said Miller from January 1, 1941 to September 10, 1941, was approved and ratified at the annual meeting of the shareholders on January 20, 1942, only over and against the objection and protest of the plaintiff herein.

31. The District Court erred in finding that the resolutions of stockholders or any part thereof mentioned in paragraph 29 and 30 hereof were regularly and/or legally adopted or adopted in good faith and/or without fraud by each and all or any of the stockholders voting for the same.

32. The District Court erred in not finding that the amount of the salaries and compensation of the said Ballagh and the said Miller were fixed with the purpose and intent of depriving the plaintiff of dividends accruing or to accrue to plaintiff from the said Patterson-Ballagh Corporation.

33. The District Court erred in not finding that, if said excessive salaries and compensation had not been paid to the said Ballagh and the said Miller, such excess would have been available for the payment of dividends to the stockholders of Patterson-Ballagh Corporation, including the plaintiff.

34. The District Court erred in not finding that the amount of the salaries and compensation to the said Ballagh and the said Miller were neither fairly nor honestly determined by the said Ballagh and the said Miller.

35. The District Court erred in not finding that for and on account of the payment of excessive salaries and compensation the defendants Ballagh and Miller are indebted to said Patterson-Ballagh Corporation in at least the sum of \$41,416.66, no part of which has been repaid by the said Ballagh and the said Miller, or either thereof, to the said corporation.

36. The District Court erred in not finding that plaintiff failed to obtain any action by the directors or the stockholders of Patterson-Ballagh Corporation due to the domination, control, and direction of said corporation by the said Ballagh and the said Miller, and due to a scheme and conspiracy to defraud, entered into by the said Ballagh and the said Miller.

37. The District Court erred in finding that, prior to the participation in and approving of the election of H. C. Armisted, Howard Burrell, J. C. Ballagh and D. G. Miller as directors and officers on June 21, 1941, the said Dulin knew the attitude of said persons concerning the compensation that said persons considered should properly be paid to the said Ballagh and the said Miller during 1941.

38. The District Court erred in finding that plaintiff has waived any right it might have to complain of the compensation paid to the said Bal-

lagh and/or the said Miller by Patterson-Ballagh Corporation from January 1, 1941, to the time of filing suit herein on September 10, 1941.

39. The District Court erred in concluding, as a conclusion of law, that the compensation paid by Patterson-Ballagh Corporation to the said Ballagh from January 1, 1939 to the time of filing suit herein has been fair, just, or reasonable as to said corporation at the various times it was authorized, approved, or paid.

40. The District Court erred in concluding, as a conclusion of law, that the compensation paid by Patterson-Ballagh Corporation to the said Miller from January 1, 1940 to the time of filing suit herein was fair, just, or reasonable as to said corporation at the various times it was authorized, approved, or paid.

41. The District Court erred in concluding, as a conclusion of law, that plaintiff has waived any right to complain of the compensation paid by Patterson-Ballagh Corporation to the said Ballagh and/or the said Miller from January 1, 1940 to the time of filing suit herein.

42. The District Court erred in concluding, as a conclusion of law, that plaintiff has waived any right to complain of the compensation paid by Patterson-Ballagh Corporation to the said Ballagh and the said Miller from January 1, 1941 to the time of filing said suit herein on September 10, 1941.

43. The District Court erred in finding that plaintiff is not entitled either on its own behalf or

on behalf of Patterson-Ballagh Corporation to any relief or recovery whatsoever against any of said defendants.

44. The District Court erred in finding that the defendants herein, or any of said defendants, are entitled to recovery of or from plaintiff their, his, or its respective costs of suit herein incurred.

45. The District Court erred in ordering that judgment be entered in favor of the defendants.

46. If the District Court, in determining the value of the services of the said Ballagh to Patterson-Ballagh Corporation, or in determining that the salary and/or compensation of the said Ballagh for services to Patterson-Ballagh Corporation was not excessive, took into consideration the value of any claimed services rendered by him as an inventor or as the patentee of any inventions or as the applicant for any patent or the value of any inventions or of any patents or of any applications for patents of the said Ballagh, whether or not assigned to Patterson-Ballagh Corporation, the said District Court erred in so doing.

47. If the District Court, in determining the value of the services of the said Miller to Patterson-Ballagh Corporation, or in determining that the salary and/or compensation of the said Miller for services to Patterson-Ballagh Corporation was not excessive, took into consideration the value of any claimed services rendered by him as an inventor or as the patentee of any inventions or as the applicant for any patent or the value of any inventions or of any patents or of any applications for patents

of the said Miller, whether or not assigned to Patterson-Ballagh Corporation, the said District Court erred in so doing.

For each and all of the above reasons the District Court erred in finding and determining that appellees were entitled to judgment as rendered.

Dated, June 21, 1943.

CHICKERING & GREGORY,
DONALD Y. LAMONT,
FREDERICK M. FISK,
111 Sutter Street,
San Francisco, California.

LYON & LYON,
LEONARD S. LYON,
IRWIN L. FULLER,
811 West Seventh Street,
Los Angeles, California.
Attorneys for Plaintiff and
Appellant.

Service of a copy of the within points to be relied upon is hereby acknowledged this 21st day of June, 1943.

MUSICK, BURRELL &
PINNEY,
By A. B. JACKSON,
Attorneys for Defendants and
Appellees.

[Endorsed]: Filed June 23, 1943; Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause]

DESIGNATION BY APPELLANT, BYRON JACKSON CO., A CORPORATION, OF THE PARTS OF THE RECORD SAID APPELLANT THINKS NECESSARY FOR THE CONSIDERATION OF THE POINTS ON WHICH IT INTENDS TO RELY ON APPEAL.

Pursuant to Rule 19 (6) of the Circuit Court of Appeals for the Ninth Circuit, Byron Jackson Co., a corporation, the appellant above named, hereby designates the following parts of the record which it thinks necessary for the consideration of the points upon which it intends to rely on the appeal, to-wit: the entire record.

The appellant requests that the entire record be printed except such parts as the printing thereof may hereafter be dispensed with by stipulation and appropriate order, or by appropriate order, and appellant furthermore requests that such parts of said

record, the printing of which may hereafter be dispensed, be not printed.

Dated, June 21, 1943.

CHICKERING & GREGORY,
DONALD Y. LAMONT,
FREDERICK M. FISK,

111 Sutter Street,

San Francisco, California.

LYON & LYON,
LEONARD S. LYON,
IRWIN L. FULLER,

811 West Seventh Street,

Los Angeles, California.

Attorneys for Appellant.

Service of a copy of the within Designation is hereby acknowledged this 21st day of June, 1943.

MUSICK, BURRELL &
PINNEY,

By A. B. JACKSON,

Attorneys for Defendants-
Appellees.

[Endorsed]: Filed June 23, 1943; Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between plaintiff-appellant and defendants-appellees, this Honorable Court approving and consenting thereto, that in printing the record in the above entitled cause the Clerk shall omit therefrom the following documents and exhibits:

The defendant company's financial statements, Exhibits 6a, 6b and 6c, respectively, offered and received in evidence upon the trial of said cause, because of the difficulty and expense in printing the same and the further fact that the court will not be required to make a minute study of the same;

It Is Further Stipulated that the documents and exhibits above mentioned to be ommitted from the printed record shall nevertheless still constitute a part of the record to be considered by the court and shall be preserved by the court and may be referred to by counsel or the court, if deemed necessary, during the course of the argument or otherwise during the disposition of the cause as fully and to the same extent and with the same force and effect as if said documents and exhibits were printed in full in the printed record herein;

It Is Further Stipulated that in the event counsel for defendants-appellees, in the preparation of their brief, shall deem it necessary to inspect or

examine any of the aforesaid Exhibits, counsel for plaintiff-appellant, upon request by counsel for defendants-appellees will endeavor to obtain an order from this court to withdraw said Exhibits for such purpose.

Dated this 2nd day of July, 1943.

DONALD Y. LAMONT,

LEONARD S. LYON,

IRWIN L. FULLER,

Attorneys for Plaintiff-

Appellant.

MUSICK, BURRELL &

PINNEY,

By A. B. JACKSON,

Attorneys for Defendants-

Appellees.

The Foregoing Stipulation Is Hereby Approved
and It Is So Ordered this 7th day of July, 1943.

FRANCIS A. GARRECHT,

U. S. Circuit Judge.

[Endorsed]: Filed July 7, 1943. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated and Agreed by and between plaintiff-appellant and defendants-appellees, this Honorable Court approving and consenting thereto, that in printing the record in the above entitled cause the Clerk shall omit therefrom the following documents and exhibits:

(1) The depositions of J. C. Ballagh, D. G. Miller and E. S. Dulin, including all exhibits thereto save and except such exhibits as were offered and received in evidence upon the trial of said cause. These depositions were not offered or received in evidence and therefore are not a part of the record;

(2) Plaintiff's Exhibits 5a, 5b and 5c (the Pennington-Swanson audits) because of the difficulty and expense in printing the same;

(3) All letters patent, being plaintiff-appellant's Exhibits 17a, 17b, 20, 21, 22, 23, 24, 25, 26 and 27, and defendants-appellees' Exhibit H, because of the expense of printing and the further fact that the court will not be required to make a minute study of the same;

(4) All catalogues and parts thereof, being defendants-appellees' Exhibits E and O, because of the expense of printing and also upon the further fact that they will be of more aid to the court in their original form;

(5) All photographs, being defendants-appellees'

Exhibits J, K and M, because of the expense of reproduction thereof;

(6) All charts, being plaintiff-appellant's Exhibits 18a, 18b, 18c and 18d, and defendants-appellees' Exhibits A, B, F and G, because of the expense and the fact that the charts will be very difficult to reproduce due to the use of colors and due to the size thereof, and also to the fact that the court can obtain a much better understanding by an examination of the originals.

It Is Further Stipulated that the documents and exhibits above mentioned to be omitted from the printed record shall, (except as to the depositions referred in Item (1) above and which are not a part of the record, not having been offered in evidence) nevertheless still constitute a part of the record to be considered by the court and shall be preserved by the Court and may be referred to by counsel or the Court, if deemed necessary, during the course of the argument or otherwise during the disposition of the cause as fully and to the same extent and with the same force and effect as if said documents and exhibits were printed in full in the printed record herein;

It Is Further Stipulated that in the event counsel for defendants-appellees, in the preparation of their brief, shall deem it necessary to inspect or examine any of the aforesaid Exhibits, counsel for plaintiff-appellant, upon request by counsel for defendants-

appellees will endeavor to obtain an order from this Court to withdraw said Exhibits for such purpose.

Dated this 29th day of June, 1943.

DONALD Y. LAMONT,
LEONARD S. LYON,
IRWIN L. FULLER,

Attorneys for Plaintiff-
Appellant.

MUSICK, BURRELL &
PINNEY,

HOWARD BURRELL, ANSON
B. JACKSON, Jr.,

H. W. MATTINGLY,

Attorneys for Defendants-
Appellees.

The Foregoing Stipulation Is Hereby Approved
and It Is So Ordered this 30th day of June, 1943.

FRANCIS A. GARRECHT,
U. S. Circuit Judge.

[Endorsed]: Filed Jul 1, 1943. Paul P. O'Brien,
Clerk.